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PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.

DATE

7

4 October 1966

Official Reporters

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Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice G. A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on Tuesday,
4th October, 1966

APPEARANCES:

W. Z. Estey, Q.C.)
and) Counsel to the Commission
H. D. Guthrie)

G. A. Johnston Secretary

ALSO PRESENT:

C. R. Osler, Q.C.,)
M. E. Young, J.) International Nickel Company
Goodwin) of Canada, Limited

E. A. Perry and) Ontario Mining Association
J. A. Cooke)

A. G. MacDonald,)
J. R. Greaves, Dr.) The Workmen's Compensation
M. Wood, W.R. Kerr) Board

A. Clement Unemployment Insurance Com-
mission

Nethercut & Young, Limited, Official Reporters,
48 York Street, Toronto, Ontario



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---At 10:00 A.M., the Hearing commenced.

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MR. ESTEY: Mr. Commissioner, we were finishing up the first topic on the notice for the week commencing the 3rd of October. We have two submissions which were deferred from their normal position, the first being that of International Nickel in connection with Benefit Payments. If Mr. Osler is ready with that, we will proceed.

MR. OSLER: Mr. Commissioner, dealing with item 1, that is, Benefit Payments and Rates of Compensation. Before I proceed, I think I would like to make a few remarks perhaps I feel of general interest.

The other day, we were dealing with one of the earlier matters and I read a good part of the introduction of the Company's brief. I don't think it is probably proper at this point to reread it, although the introduction starting at page 2 through to and including page 6 --

THE COMMISSIONER: If it relates the history of the Act, I am quite well acquainted with it.

MR. OSLER: I appreciate that, sir, but my remarks must be assumed to be in relation to that.

THE COMMISSIONER: That has been before every Commissioner on Compensation Act enquiries in every province.

MR. OSLER: I think the views and



1 submissions put forward here at times indicate a lack
2 of the basic principles of this legislation.

3 THE COMMISSIONER: They have not been
4 discussed very much anyway.

5 MR. OSLER: That is true. Now, I will be
6 the first person to say that in Workmen's Com pensation
7 you can and will find cases of extreme hardship and
8 I think that in certain instances cases have been
9 brought before you during these hearings.

10 However, I do take exception to the very
11 frequently used expression that a person was injured
12 "through no fault of his own!" I think the percentage
13 of accidents which occur through a workman's own
14 activity or actions is in the neighbourhood, probably,
15 of about 80%. I am advised --

16 THE COMMISSIONER: What did you do,
17 just take that figure out of the blue?

18 MR. OSLER: This is not quite taken out
19 of the blue, sir. I am advised the National Safety
20 Council, which is a body in the United States
21 primarily supported by industry but of evidently
22 world-wide research, have taken the figures which I
23 am advised would be 88% of accidents which are caused
24 by a personal activity, a personal action by the
25 workman. 10% is caused by working conditions and 2%
by act of god.

26 THE COMMISSIONER: Are you going on
27 2% by Act of God? Are you going to file that?

28 MR. OSLER: I will file that later. I
29 am trying to make up the statistics for that now.
30 This is by the National Safety Council.



1 THE COMMISSIONER: Chicago?

2 MR. OSLER: It is located in Chicago, but
3 is of world-wide interest. It is not strictly related
4 to the United States experience.

5 THE COMMISSIONER: What year was that for
6 which you have those figures?

7 MR. OSLER: I will have to get an accurate
8 date, sir. Mr. Young advises me it is within the
9 last five years anyway.

10 I understand from the company itself that
11 they take the position that it is their experience
12 that at least 80% - they don't necessarily go up to
13 the high figures that are shown here of 88.

14 THE COMMISSIONER: I hesitate to use a
15 statement like that, which you understand is from the
16 company itself.

17 MR. OSLER: I agree. I am not suggesting
18 putting forward these figures, sir, as something
19 which is true but I still think this whole matter
20 should be brought into the correct perspective.

21 THE COMMISSIONER: I am just as interested
22 as you are, but I would like something more defin-
23 itive on it when I get it, even if it is the report
24 of the National Safety Council.

25 MR. OSLER: I don't think the point I
26 want to make though, sir, is, in fact, conditional
27 upon these specific figures. All I am really trying
28 to get across --

29 THE COMMISSIONER: I think I know what
30 you are trying to get across.



1 MR. OSLER: This is not a question of all
2 accidents arising, or any great proportion of accidents
3 arising, as you might say, through no fault of the
4 workman himself. I am not trying to say it is going
5 to be a particular percentage one way or the other,
6 but the tendency, I think, is to consider that all
7 accidents which are dealt with by the Board, are
8 accidents which have been caused by the employer and
9 through no fault of the workman and that, I believe,
10 is not correct. In that light, I think we must con-
11 sider the fact that this Act provides for compensation,
12 attempts to provide for compensation, whether or not
13 there has been negligence by the employer. There is
14 no need to prove negligence or establish it: there
15 is an absolute right to it.

16 The question of benefits, their
17 percentages, limits, certainly are established with
18 a view to the fact that in eliminating the negligence
19 old restrictions and inequitable restrictions, no
20 doubt, that the workman is not being one hundred
21 percent insured completely or to be made absolutely
22 whole; in other words, he has his contribution to
23 make. I think that this whole section of the Act
24 must be considered in the light - and I am afraid
25 that it would appear that too often in the past it
26 has perhaps been considered more in the social sphere
27 of providing complete assistance to every conceivable
28 case of hardship or disability, rather than in the true
29 and proper light of the Compensation Act.

30 I think there is no doubt that cases of



1 hardship and distress excite sympathetic treatment,
2 but the Workmen's Compensation Act is not necessarily
3 the proper place to obtain relief.

4 In the light of that, sir, I would like
5 to now proceed with the detailed items commencing
6 with compensation and salary ceilings, and for that
7 I would refer to page 9 of the Company's brief, Item
8 No. 2, Limits on Compensation Payable. I think, sir,
9 it would probably be better to read this and then
10 make comments after I have finished it.

11 When The Workmen's Compensation Act first
12 came into force in 1915 the maximum compensation
13 which an employee could receive in the event of an
14 accident involving total disability was 55 percent of
15 his annual earnings up to \$2,000. This limitation
16 was in effect part of his contribution to the scheme
17 of the Act in that it limits the liability of his
18 employer. The employee's contribution in this respect
19 has been constantly reduced however by various amend-
20 ments to the Act. By the amending Act of 1920 the
21 maximum compensation which an injured employee could
22 receive was increased to 66-2/3 percent of his annual
23 earnings up to \$2,000. and by the amending Act of 1949
24 the percentage was increased to the present 75 percent.

25 The limit of earnings has also been pro-
26 gressively increased to the present figure of \$6,000
27 which was established by the amending Act of 1963.
28 Each of these increases in limits represented a
29 reduction in the contribution which the employee was
30 making in accordance with the scheme of the Act and



1 at the same time represented an increase in the con-
2 tribution which the employer was making. Not only in
3 this respect has the relative contribution of employer
4 and employee been changed. Originally the employee
5 was required to contribute his outlay for medical or
6 surgical treatment, nursing and other necessities.
7 By the amendments of 1917 the cost of medical aid was
8 imposed upon the employer and further extensions of
9 medical aid have been from time to time provided for
10 and always at the expense of the employer.

11 THE COMMISSIONER: You say originally
12 the employer was required to contribute his outlay
13 for medical or surgical treatment?

14 MR. OSLER: The original Act provided
15 that the employee stood his own medical expenses.
16 That was changed in 1918.

17 THE COMMISSIONER: I didn't realize that.

18 MR. OSLER: This Company does not take
19 exception to the progressive increases from the
20 original \$2,000 to the present \$6,000 in the limits of
21 earnings considered in the calculation of compensation.
22 These increases have to some extent followed the
23 increase in wages paid and on that ground may be said
24 to be justified, but the Company submits that there
25 is no justification for any further increase beyond
26 the \$6,000 at this time.

27 The Company believes, however, that to
28 the extent the amending legislation has increased the
29 percentage applied to maximum earnings in calculating
30 compensation beyond 66-2/3 percent it has run counter



1 to the basic principles underlying The Workmen's
2 Compensation Act and was neither justified nor sound.
3 Inasmuch as these increases have substantially and in
4 some cases virtually removed the employee's contribu-
5 tion and added to the contribution of industry, there
6 is a very substantial departure from the original
7 scheme of the Act.

8 The accident fund for industries in
9 Schedule 1 is essentially of the insurance type and
10 is set up and administered as such. It is a cardinal
11 rule in disability insurance that for the protection
12 of the fund a policy should be limited to pay to the
13 disabled individual substantially less than he would
14 normally earn were he not disabled. Industry should
15 be entitled to the same protection in regard to its
16 contributions which establish and maintain the accident
17 fund.

18 The present cessation of deductions for
19 income tax and unemployment insurance, and in the
20 case of this Company and undoubtedly many others the
21 payment by the Company of insurance premiums and
22 Ontario Hospital premiums while a man is receiving
23 compensation for temporary total disability, must be
24 considered.

25 THE COMMISSIONER: The present cessation
26 of deductions for income tax and unemployment insur-
27 ance. What do you mean, once they go on compensation?

28 MR. OSLER: Yes, once they go on com-
29 pensation.

30 THE COMMISSIONER: And in the case of



1 this Company, the payment of the Company by insurance
2 premium and Ontario Hospital premium. All right,
3 while a man is receiving compensation, what insurance
4 premiums do you refer to?

5 MR. OSLER: You will see them listed
6 down here a little farther, sir.

7 THE COMMISSIONER: Down below, yes. In
8 other words, as far as Ontario Hospital premiums are
9 concerned, in any event, they don't cover compensation
10 cases, do they? That is for illness other than
11 industrial cases?

12 MR. OSLER: Yes. Take, for example,
13 the case of a single man employed by this Company earn-
14 ing \$100 per week who, as a result of an accident,
15 receives compensation for temporary total disability.
16 His income during his disablement amounts to \$75 per
17 week, that is on a 75 percent basis, and the whole
18 amount is received by him without deduction. If the
19 same man were working, he would earn \$100 per week
20 but after deductions of \$14.10 for income tax, 94¢
21 for unemployment insurance, 40-1/2¢ for Ontario
22 Hospitalization, 39¢ for PSI, 71¢ for life insurance,
23 96¢ for sickness and accident insurance, \$1.59 for
24 Canada pension plan, \$1.25 for union dues and an
25 estimated minimum of \$2.50 for transportation, the
26 amount received by him would be \$77.16. This means
27 that in some cases an employee can receive almost
28 as much money through compensation for temporary
29 total disability than would be received while working.
30 Naturally if the percentage were raised a complete



1 distortion could occur.

2 THE COMMISSIONER: When you cite these
3 figures, that is a man working for International
4 Nickel?

5 MR. OSLER: That is right, sir. It
6 states here: "Take for example the case of a single
7 man employed by this Company", sir. Certainly the
8 various Company paid benefits here would not, of
9 course, have universal application, although in the
10 modern day the fringe benefit has become very much a
11 part of a man's remuneration, in most if not all
12 cases.

13 Even setting aside various amounts which
14 might be said to have particular application to this
15 Company, such as PSI, life insurance, sickness and
16 accident insurance, the amount received by the
17 employee while working would still be little above
18 the amount which he would receive through compensation
19 for temporary total disability.

20 While this Company has noted that Mr.
21 Justice Roach in his report concluded that an
22 illustration such as above did not have any bearing
23 on the question, it is suggested that he based his
24 conclusion on the decisions of the courts in England
25 and Ontario as referred to by him in his report.
26 We believe the views expressed in these cases are no
27 longer applicable in the light of those of the more
28 recent cases, such as British Transport Commission
29 v. Gourley (1956) A. C. 185 (which overruled the
30 Jordan v. Limmer & Trinidad Lake Asphalt Co. Ltd.



1 case) which was referred to by Mr. Justice Roach,
2 and which was followed in Ontario by Walker v. Copp
3 Clark Publishing Co. Ltd. (1962) 33 D.L.R. (2d) 338.

4 THE COMMISSIONER: The Supreme Court of
5 Canada does not support the opinions in the Gourley
6 case?

7 MR. OSLER: I noticed in the Gourley
8 case, you followed that without dissent.

9 Accordingly this Company believes that
10 the above illustration does in fact have bearing on
11 the question, and it is submitted that the present
12 percentage applied to gross earnings without con-
13 sideration being given to expenses which are incurred
14 by an employee during the course of his normal employ-
15 ment and which are not incurred during the period of
16 his disability is already too high.

17 Where employees suffer little financial
18 loss or may even stand to gain financially as a result
19 of an accident, not only malingering is encouraged
20 but the most important matter of rehabilitation may
21 be retarded.

22 Now, sir, as I think I have pointed out,
23 there has been a steady relief, and it is pointed out
24 in the brief, to the workman of his contribution at
25 the expense of industry. The limit of \$6,000 is
26 approximately \$115 a week. While originally I
27 believe Mr. Justice Meredith contemplated a figure
28 to be established of \$2,000, a figure which would
29 be, he thought, the highest figure of a wage earner
30 as distinct from others, there is no doubt that this



1 was measured in the light of conditions as they
2 existed in that day. Back in 1913 - 1914. The change
3 today in modern form of wages which are being paid
4 in the various industries, I think, has resulted in
5 great difficulty in drawing a line to set a maximum.
6 Certainly, the view was that the workman who was
7 earning wages which were not much above those which
8 were required to maintain him - I am not talking in
9 any luxurious manner or anything else, but a bare
10 method of maintaining himself, that, I suggest, was
11 really the reason behind the fixing of the limit so
12 that it was fixed with a view that a man who was
13 below that limit would receive compensation which
14 would be sufficient to enable him to carry on while
15 those above that limit, I think it has been pointed
16 out, would probably have been able to do something
17 towards the care of themselves.

#2
AS 18 In that light, I think the test which
19 had been fixed on by a number of people is that
20 advocated by Mr. Justice Merredith, that is, the
21 highest wage, has really been emphasized beyond its
22 true worth. In that regard, the level of \$6,000,
23 as it is in Ontario today, which, on a weekly basis,
24 is \$150. is certainly well above the average in the
25 mining metals of \$104.50, which I think was published
26 in the weekly wages of the Dominion Bureau of Statistics.
27 The last information I have on that is January, 1966,
28 and that is even allowing for an increase which has
29 occurred during this past year in a number of
30 instances. It is to be noted that the change from



1 January, 1965 to January, 1966 is a matter of about
2 \$7.00. So, even if you increase the \$104.50 by
3 \$2.00, it is still below the \$6,000 a year.

4 MR. ESTEY: What was your average?

5 MR. OSLER: This is the metal mining,
6 \$104.50 in January, 1966 this year and, in January,
7 1965, it was \$97.61.

8 THE COMMISSIONER: That is in the mining
9 industry?

10 MR. OSLER: Yes, Mr. Commissioner. The
11 average for all industry in Ontario in 1966 was
12 \$95.87.

13 THE COMMISSIONER: This is 1965?

14 MR. OSLER: 1966, February, and it is
15 \$95.87; these are the average weekly wages.

16 MR. ESTEY: These are cash wages. They
17 are not contributions plus wages. They are cash
18 wages?

19 MR. OSLER: Cash wages. This question
20 of maximum limit has, of course, been dealt with by
21 the Commissioners in various other provinces. Mr.
22 Justice Tysoe, in his report, dealt with this and
23 he recommended an increase in British Columbia. I
24 have not been able to find that it has been implem-
25 ented as yet. At the moment, I believe Saskatchewan
26 and Ontario are the only two provinces which have
27 this limit of \$6,000. The other provinces are below
28 that. There are some statistics provided by Mr.
29 Justice Tysoe in his report, and I think on page
30 34, where he indicated percentages of persons



1 earning in excess of that -- he was dealing there
2 with the breaking point of \$5,000 which was their
3 figure.

4 Basically, sir, as you increase your
5 maximum limit, of course, so you fairly substantially
6 increase the load on industry which, I submit,
7 strictly at this time is not justified, and that the
8 people who are earning in excess of \$6,000, surely,
9 should be able to have some ability ---

10 THE COMMISSIONER: The ability
11 to set something aside. When you talk about increased
12 burden on industry, what percentage can you give me
13 offhand, of your product is sold outside of Canada?

14 MR. OSLER: Well, sir, there is no doubt
15 there is a very large part of our product sold out-
16 side the country. I will see if I can obtain some
17 figures for you.

18 THE COMMISSIONER: The only thing that
19 I had in mind is that it is all very well to say
20 that industry can pass these things on in the cost
21 of the product, and if there was no business other
22 than that amongst ourselves, that we bought and sold
23 to each other and did not have to seek to sell to
24 the rest of the world, then that might be a valid
25 argument. However, when it comes to selling in the
26 competitive market, this matter assumes some
27 importance, perhaps.

28 MR. OSLER: Sir, you will find that
29 we come back to that in another section. There is
30 no doubt, it is all very well to say that this cost



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1 is merely passed on to the public. I quarrel with
2 that statement. To a certain extent it may be passed
3 on to the public, and to a very small extent, I think,
4 as far as this Company is concerned, it is passed
5 on to the public in this province.

6 THE COMMISSIONER: I don't think there
7 is much point in going into that because, obviously,
8 the Company still makes enough to pay its dividends
9 and buy its reserves.

10 MR. OSLER: There is no doubt about that,
11 sir, but somewhere the time will come as to how far
12 you move below in industry and you must take into
13 consideration not just large and well established
14 companies, but you have also the type of thing to be
15 considered, such as the smaller companies.

16 THE COMMISSIONER: I am more concerned
17 with those than the others.

18 MR. OSLER: The smaller companies have
19 been attempting/^{it}now with this arrangement in the
20 United States in the automobile industry, and I think
21 these type of costs would be a very severe burden
22 and a very major factor. I think, again, as has been
23 pointed out by Commissioners in the past, that one
24 of the grave dangers in loading industry is in the
25 small companies where an additional load can bring
26 them to almost a breaking point but certainly, it
27 is no service to the workmen to not have those
28 industries carrying on.

29 Insofar as the limit of \$6,000 is con-
30 cerned, I feel that the contribution of those who



1 are less able to make such a contribution is probably
2 justifiable/^{in.} Bearing in mind the \$6,000 level, their
3 contribution is less when you begin to apply the
4 percentage, whereas those in excess of \$6,000 could
5 bear the additional burden or the burden which results
6 from the imposition of a limit at \$6,000.

7 This fund, The Workmen's Compensation
8 Board certainly is of an insurance type -- that is
9 on Schedule 1 employees. To that extent, similar
10 regard must be had to the basic question/^{as} to the form
11 of disability insurance. I think there can be no
12 doubt, sir, -- I have made enquiries at various levels,
13 various insurance agencies, and I am advised that they
14 still look primarily to somewhere around two-thirds.
15 They will occasionally go to 75 percent. From that
16 point of view ---

17 THE COMMISSIONER: You are not suggesting
18 we turn it back to 66-2/3, are you?

19 MR. OSLER: I don't think we have gone
20 to that. From a practical point of view, I don't
21 think you would get it back. However, I don't think
22 there is any doubt there is a great danger at the
23 present time of it seriously affecting the rehabilita-
24 tion process and it encourages malingering. When
25 your compensation is virtually what you can receive
26 by earning your wages, there is very little inclina-
27 tion on the part of some to return.

28 Dealing with the matter of the Gourley
29 case, not so much on the exact finding in that case,
30 that tax was properly taken into consideration, I



1 think it is a question of the issue really being
2 whether the facts relied upon as affecting a measure
3 of damages are too remote to be taken into considera-
4 tion. But that is really the basis of this. There is
5 an argument that various people have various tax levels,
6 that is, deductions in different situations. On the
7 other hand, damages is really a matter of an estima-
8 tion. It cannot be completely exact. When you are
9 dealing with Workmen's Compensation, and particularly
10 the fact that negligence really does not enter into
11 it; it is purely a question of a straight payment of
12 compensation because of an injury no matter what the
13 cause, then I believe that truly facts as to the pay-
14 ment of income tax and the payment of Canada pension
15 and unemployment insurance and these various other
16 matters, are not too remote. These are expenses
17 which the average workman must incur, just the same as
18 if I was -- surely my expenses in carrying on a
19 practice are just as much deductible from the gross
20 fees of my earnings. To that extent, I believe these
21 examples of the costs to the workmen of obtaining
22 wages are not too remote; they are definitely within
23 the sphere of being used to consider whether this
24 which compensation/is presently being based on the 75 per-
25 cent should be increased. I should point out that in
26 my example, I have taken time to determine that in
27 this example of ours if a man earning \$100 a week,
28 that if you put that up to \$120 a week, the difference
29 between what a man will receive in compensation and
30 what the man would have earned would be \$6.26 per week;



that is, he would earn \$6.26 a week more than he would receive on compensation if he was earning at \$120 a week, which is still not a very great deal of difference between the amount of the compensation and the amount to earn, and in there you have built in, (a) the man's contribution and (b) the question of encouragement or malingering or returning ^{and} rehabilitation.

I would like to now, sir, pass on to what we have called Partial Disability Allowances. This is covered in Section 10 of the Company's brief on page 26, and I will read:

It was an original and basic concept of the Act that an injured employee or his family would not suffer financial loss beyond the share that the employee would be expected to contribute.

Experience has shown that in many cases employees are in receipt of permanent partial disability compensation when in fact without such compensation they would be suffering no financial loss.

It is respectfully submitted that section 25 of the Act should be amended to permit the employer in a case where compensation is payable out of the accident fund to require a review of the nature and degree of an injury particularly in the light of the average weekly earnings that the employee is earning or able to earn in a suitable occupation and the average weekly earnings he would be earning in the job at which he was engaged before the accident.

THE COMMISSIONER: If he asks for it, doesn't he get it now.



1 MR. OSLER: The workman may ask for a review,
2 but the employer may not.

3 THE COMMISSIONER: There is nothing to say
4 you might not ask for it. The Board has power to review
5 it, hasn't it.

6 MR. OSLER: But section 25 of the Act
7 specifically says, "Any weekly or other periodic payment
8 to workmen may be reviewed at the request of the employer
9 or the workman if the compensation is payable by the
10 employer individually or if the compensation is payable
11 out of the Accident Fund of the Board's own motion or
12 at the request of the workman". Now, the Board them-
13 selves

14 THE COMMISSIONER: What you ask is --

15 MR. OSLER: Be amended so that the employers
16 have the right of review.

17 Now, the problem which we have encountered,
18 sir

19 THE COMMISSIONER: I would have thought that
20 upon a request by the employer as well to the Workmen's
21 Compensation Board for review and giving sufficient facts
22 to justify it, that the Board would be happy to do it.
23 Has that been your experience?

24 MR. OSLER: Well, let me say, sir, surely
25 if you are going to follow the Act specifically, it is
26 only at the Board's own motion and there is a very clear
27 distinction between this particular thing. If you are
28 not covered by the fund then you, as an employer can
29 request it; if you are covered by the fund the employer
30 can't request it. I think there are grounds - I admit



1 that if you asked the Board to review it and the Board
2 were loathe to review it, I presume the inclination
3 would to be review it quickly and say, "No change", but
4 on the other hand, I think at the moment the Board could
5 quite properly say, "No, we are not going to entertain
6 any kind of review, we are not going to initiate this
7 ourselves". I think if the employer asks, though, that
8 he should be entitled to have the Board review a claim.

9 The great problem on this, sir, is that a
10 man who has been off on compensation, has come back,
11 being put into what might be called a light duty or
12 preferred occupation, has eventually got an assessment
13 of permanent partial disability and within a very short
14 time he is put back into his original occupation of
15 stope leader, or what have you, and he is there then
16 evidently quite able to carry on the full range of
17 duties. He is receiving his full wages and, at the same
18 time, receiving his compensation.

19 THE COMMISSIONER: Well, you don't want to
20 discourage a man going back and getting that even though
21 he has got a partial disability and, on the other hand,
22 it might be the kind of a thing - supposing it was the
23 loss of a hand, where he would be entitled to it there.

24 MR. OSLER: Yes, the loss of hand, a man
25 is not going to go back as a stope leader or a person
26 in that capacity.

27 THE COMMISSIONER: He might go back to many
28 things, but I think --

29 MR. OSLER: I am not suggesting it should
30 be cut off. I feel the employer should have the right



1 to ask a review.

2 THE COMMISSIONER: Ask in certain circumstances?

3 MR. OSLER: In the case of a mutilation,
4 certainly there is good grounds that he should be entitled
5 to compensation.

6 THE COMMISSIONER: It might indicate from
7 what he has been doing that he didn't have the original
8 disability he claimed he had, or something like that?

9 MR. OSLER: This, of course, goes back to
10 the same old problem - sprains, strains, and this type
11 of thing where the problem arises and we certainly have
12 experienced this situation.

13 THE COMMISSIONER: I suppose it is not one
14 of the easiest things the Board has to deal with, maybe
15 one of the most difficult. But, in any event, what you
16 ask for is that you have the same right as the employer
17 under Part 2?

18 MR. OSLER: That is right, sir.

19 I would now like to deal with the two other
20 sub-headings, that is, Adjustments and Increase in Cost
21 of Living and Retroactivity of Increases in Benefit
22 Payments, which I believe are covered in section 1 of
23 the Company's brief appearing at page 6.

24 The basic scheme of the legislation of 1914
25 includes the principle that employers in any class should
26 not be unduly or unfairly burdened in future years with
27 payments which are to be made in those years in respect
28 of accidents which have previously happened. While this
29 principle is clearly recognized in sections 84, 98 and
30 106 of the present Act, amendments have been introduced



1 which deviate from this basic principle. The first
2 amendment is contained in the amending Act of 1920 which
3 in effect increased the amount of compensation payable
4 in cases of injury resulting in death whether or not
5 the accident happened before or after the effective date
6 of the Act and also introduced the forerunner of the
7 present section 35 thereby departing from the above
8 basic principle. Subsequent amendments including
9 particularly the amending Act of 1965 have also con-
10 stituted clear departures from this principle.

11 The effects of such deviations from principle
12 can be most detrimental to a present-day industry at
13 any given time. Industries of short duration can con-
14 tribute heavily to the total number of accidents and
15 leave large payments to be collected from the continuing
16 industries should further increases for payments for
17 past accidents be put into effect. The gravity of the
18 impact of such increases was clearly recognized in the
19 distribution of the assessment, which resulted from
20 the increase provided by the amending Act of 1948, over
21 the years 1948, 1949 and 1950, and again in the dis-
22 tribution over ten years of the assessment which
23 resulted from the increase provided by the amending Act
24 of 1965. I should, perhaps, pause there --

25 THE COMMISSIONER: When you say the gravity
26 was clearly recognized, how do you mean by that - it
27 was too much to impose in one year?

28 MR. OSLER: That is right, sir. The
29 capital some required to finance it was presumably too
30 heavy a burden. That was why it was spread over the



1 years. I think Mr. Justice Roach mentions the matter
2 of the 1938 Act --

3 THE COMMISSIONER: In other words, those
4 increases, it was not by reason of a decision of the
5 legislature that there was so much money in the accident
6 fund that they could afford to be a little more generous:
7 there had to be assessment to take care of it?

8 MR. OSLER: Oh, yes, I think the assessments
9 were made under section 35(1). Mr. Kerr can probably
10 give you more detailed information on that. I have taken
11 the matter of spreading the distribution over ten years
12 from a note contained in the 1965 report of the Board
13 where it is indicated that that was to be amortized over
14 ten years.

15 This Company believes that amendments to the
16 Act which have the effect of casting upon industries
17 today a substantial share of the financial burden result-
18 ing from past years are unsound and unfair. They can
19 result only in a steady increase in the financial burden
20 of industry in this Province to the detriment of that
21 industry in its efforts to compete, particularly in
22 markets outside of Ontario.

23 The main argument put forward by proponents
24 for increasing the compensation for accidents which
25 have occurred in past years is that living conditions
26 have changed, and a compensation which was fair and
27 proper when settlement was made is no longer adequate
28 to meet the changed living conditions. This situation
29 is one which has to be faced by all persons who for
30 any reason have been placed in the position of having



1 to live on an income fixed in past years. It is not the
2 result of the original injury or circumstances which
3 placed them in that position. It is the result of the
4 depreciation in value of our currency and the consequent
5 increase in our cost of living. The increase in our cost
6 of living is the responsibility of the economy as a whole
7 and not that of industry alone.

8 This particular subject was considered by
9 both the late Mr. Justice Middleton and Mr. Justice
10 Roach in their reports. The former pointed out that the
11 increase with reference to accidents that had already
12 happened was a complete departure from the scheme of
13 the Act. That appears, sir, on page 7 of Mr. Justice
14 Middleton's report. The latter, dealing specifically
15 with section 35(3) of the 1948 amendment which is sub-
16 stantially the same as section 12 of the amending Act
17 of 1920, stated

18 "In my very respectful opinion, however, it
19 was error to provide that the additional
20 moneys necessary to provide for the increases
21 in respect of past accidents should be
22 levied and collected from the employers.
23 Such a provision was entirely contrary to
24 the scheme of the Act and violated one of its
25 fundamental principles."

26 Later, in giving particular consideration to section
27 33(1) of the Act, now section 35(1), he states:

28 "For the reasons which I earlier stated, to
29 levy and collect [the increases] from the
30 employers is neither more nor less in



1 accordance with the general principles and
2 provisions of the Act. It is in direct
3 violation of those principles."

4 Finally Mr. Justice Roach recommended that the then
5 section 33 should be deleted from the Act and that a
6 provision be inserted whereby such increases be paid
7 by the Government to the Board out of the Consolidated
8 Revenue Fund. It is submitted that the findings of
9 these two Commissioners are still correct and that the
10 recommendation of Mr. Justice Roach should be followed
11 so that the original basic principles are maintained
12 and the burden of paying for any such increases falls on
13 the population at large and not on industry alone.

14 Sir, this, I think, has probably been dealt
15 with time and again before these Commissions. The fact
16 that it appears to have not had a great deal of weight
17 with the legislative people, I still don't think means
18 that it should be ignored. There can be no doubt that
19 these problems arise through the increase in the economy.
20 What Mr. Justice Roach said in his report on pages 74
21 and 75 is still just as apt today as it was then, perhaps
22 even more so. To load the industry with things which
23 are not strictly industry's responsibility - it con-
24 tributes, yes, but it should be in the same proportion
25 as with all the rest of the economy and the rest of the
26 population, not singled out to bear the whole burden.

27 The fact that you mentioned a moment ago,
28 sir, I think has very great bearing on this matter
29 which is costs to be loaded on industry cannot necess-
30 arily be passed on to the public. Mr. Justice Turgeon,



1 I think, in his report commented that he thought industry
2 should bear the cost of increases of compensation such
3 as this on the basis, or primarily on the basis that
4 the burden of social legislation already carried by
5 the people was great, or almost too great and that the
6 employers would be able to pass it on, although he is
7 very careful to note that he had really no evidence
8 before him to indicate the extent to which it had been
9 able to be passed on.

10 With respect, sir, I feel that the fact that
11 the economy is already loaded with social legislation,
12 is really no argument or grounds for saying that this
13 additional piece of social assistance should be borne
14 by somebody else. If, I think as Mr. Justice Roach
15 said, the **past generation** was responsible for this
16 social legislation and the increase in the cost of
17 living and so on surely it should bear the cost of it,
18 not industry and, insofar as passing it on is concerned,
19 I think, as we discussed a moment ago, when you asked
20 me a question on it, this question to a certain extent
21 in certain instances, yes, it can be passed on, to some
22 extent, but I suggest there are probably many industries,
23 small industries in this country and in Ontario partic-
24 ularly today who find that any additional loading of a
25 burden on them would become critical.

26 I did not set out section 35(1) of the Act,
27 sir, but I do think that when you consider that section
28 itself and you see the direction of the Board to raise
29 these additional moneys where the section states
30 specifically "At such time or times as the Board may



1 deem most expedient and most in accordance with the
2 general principles of this Act" - when you consider that
3 wording in the light of the general principles of the Act,
4 I think you can see why particularly Mr. Justice Roach
5 thought that he could not follow the provisions of the
6 Act.

7 THE COMMISSIONER: He suggested the section
8 be deleted.

9 MR. OSLER That is quite right, sir. He
10 said that, basically, what was happening was that they
11 were being levied and raised completely in the face of and
12 in violation of the scheme and principles of the Act.

13 Of course, you have got the same situation
14 here where you are elevating one section, in other words,
15 we are dealing strictly with, I suggest, social legisla-
16 tion in this instance and where we are, in fact, acting
17 to raise pensions and compensation which I am not in
18 any way stating perhaps should not be raised, but we
19 are raising them but any personnel who are under pensions
20 or fixed sums, such as workmen, there is no such pro-
21 vision for raising them, so that you are raising one
22 section of the economy as against another.

23 I suggest, sir, that as you already know,
24 there are long comments on practically all the reports
25 of Commissioners dealing with this item, and I think at
26 this point it is probably --

27 THE COMMISSIONER: I think I understand your
28 argument. I am acquainted with the discussions in these
29 reports.

30 MR. OSLER: I think it would be a burden to
continue on that. I think it is clear enough. I think



1 Mr. Justice Roach, at pages 74 and 75, has set it out
2 very clearly and very succinctly.

3 MR. ESTEY: I just have one or two questions
4 I would like to find out about Mr. Osler before you sit
5 down. On page 10 of your brief you suggest that once
6 you pass $66\frac{2}{3}$ percent of the annual earnings, that
7 this somehow is a departure from the initial principle
8 of the Workmen's Compensation concept. I am not clear
9 why 75 percent is any departure from $66\frac{2}{3}$ percent or
10 71 percent or something in between.

11 MR. OSLER: Because I think that what you
12 are doing, Mr. Estey, is that in making that move you
13 so substantially remove a workman's contribution from
14 the Act that, theorywise, I was trying to point and
15 probably didn't do it - the fear that probably behind
16 this Act you wiped out all questions of having to prove
17 negligence, all the offences and all the rest of it.
18 You say, all right, the two parties involved, the workman
19 and the employer will both contribute to this Act.

20 MR. ESTEY: What you are saying is that
21 compensation tails off to zero somewhere between $66\frac{2}{3}$
22 and 75 percent.

23 MR. OSLER: It doesn't in fact tail off
24 completely to zero in all cases, but it comes substan-
25 tially up to that point.

26 MR. ESTEY: All right, therefore, you are
27 saying that if you wish to either increase the salary
28 ceiling as the basis of calculation beyond \$6,000, or
29 increase the percentage of return of about 75 percent
30 that the employee should make a cash contribution.



1 MR. OSLER: I am not suggesting that, no.

2 MR. ESTEY: Does that follow from what you
3 say?

4 MR. OSLER: No, I don't think there is any
5 question of the employees making a cash contribution.

6 MR. ESTEY: Should it be optional?

7 MR. OSLER: Their contribution should be
8 maintained in the form of not being completely -- of
9 receiving compensation which is equal to or substantially
10 equal to their earnings.

11 MR. ESTEY: We understand your submission
12 on that, but you will recall from being here that some
13 people have suggested that the workmen should not,
14 whether it be a contribution or not, suffer a loss of
15 income by reason of an accident and I hesitate in using
16 the words "Through no fault of his own". My question
17 is this: If that be a valid comment, then, and if yours
18 be a valid comment, that the end of the road has been
19 reached from the point of view of an employer burden,
20 then I am asking you whether it follows in the view
21 of your clients that the workman now either mandatorily
22 or optionally they make a cash contribution and then get
23 what he wants, which is one hundred percent of his earn-
24 ings? Does that offend any principles?

25 MR. OSLER: No, I think it is converting
26 one formal contribution into another, that is all.

27 MR. ESTEY: It follows though, that if you
28 run out of these contributions, as Mr. Justice Middleton
29 and, prior to him, Mr. Justice Meredith thought, if you
30 run out of those by these increases in the Act, then you



1 must turn to the other alternative which is a cash
2 contribution.

3 MR. OSLER: I still think it is the wrong
4 approach, though, because as soon as you get yourself
5 into the question of one hundred percent, then you have
6 completely thrown overboard any kind of insurance
7 feature.

8 MR. ESTEY: I see something at the bottom
9 of page 11 of your brief that bothers me -- is that
10 fire insurance? Why is it so unique about disability
11 that he can't go to one hundred percent?

12 MR. OSLER: I think, basically, you will
13 find the insurer who defines disability, the moment they
14 get above 66 percent, in normal cases, then the liability
15 of abuse is too great.

16 MR. ESTEY: Human frailties defeat the
17 principle at that point; that is what you are saying?

18 MR. OSLER: Yes.

19 MR. ESTEY: Therefore, you are saying that
20 this insurance^{is}/essentially that type of insurance which
21 we have seen covered for many centuries commercially as
22 disability insurance.

23 MR. OSLER: Yes. I am not suggesting that
24 every person, by any manner or means -- I am not suggest-
25 ing that every person takes advantage of this type of
26 thing, but human nature being as it is, there are going
27 to be people who will take advantage of it. If you
28 bring this up to one hundred percent, you are inviting
29 people to do that.

30 THE COMMISSIONER: Mr. Justice Turgeon said



1 most workmen in any event would seek first to get back
2 to work because they would rather be at work than doing
3 something else, but it might, with those of a
4 not too strong character, lead to malingering.

5 MR. OSLER: I think that is true, sir.

6 MR. ESTEY: This question of your calculation
7 on page 12, where you take the single man as the example
8 and you take his tax deductions and everything else and
9 get him down from \$100 a week to \$77.16. I just want to
10 find out from you how many of these deductions you say
11 could carry on while he is under compensation? Does he
12 have to pay any of those things which you enumerate as
13 subtractions?

14 MR. OSLER: No.

15 MR. ESTEY: He pays none of them. So, when
16 he goes to temporary total disability he does not pay
17 union dues, he does not pay Canada Pension, life
18 insurance, PSI, O.H.S.C.

19 MR. OSLER: One thing I should point out:
20 As far as union dues are concerned, I cannot say whether
21 the man himself voluntarily pays the dues. We do not
22 make a deduction.

23 THE COMMISSIONER: How about the Ontario
24 Hospital Insurance. There is at least one brief in here
25 which suggests that the Board should, from his compensa-
26 tion payments, deduct the Ontario Hospital payments
27 because the workmen do not always keep them up.

28 MR. OSLER: We keep them up in this case.

29 MR. ESTEY: The company pays them?

30 THE COMMISSIONER: You pay them, I see. But



1 perhaps every industry does not.

2 MR. OSLER: Oh, I agree.

3 MR. ESTEY: But his personal liability, to
4 get this on a parallel base, his personal liability when
5 he is receiving \$75 a week does not extend to any of
6 the items which ^{you} enumerate as deductions from the \$100
7 per week? That is the thing in a nutshell.

8 MR. OSLER: Yes, that is right.

9 MR. ESTEY: So, what you are saying is that
10 it is almost profitable to get the \$75 a week as against
11 the \$100 a week?

12 MR. OSLER: Not quite. It is very, very
13 close.

14 MR. ESTEY: Of course, you picked the lowest
15 income tax rate -- the highest income tax rate for that
16 example.

17 MR. OSLER: If you take an example of a man
18 earning \$60 a week or something, that is a terrific
19 difference. Actually, I wanted at this point to give
20 you the additional example of a person earning \$120,
21 so that you have a spread. But even in that case the
22 difference is only \$6.26.

23 MR. ESTEY: You have already answered this
24 with respect to temporary total disability: you carry
25 on the company contributions and these welfare plans,
26 and I take it that is continued until the employee is no
27 longer an employee? You carry him on the payroll until
28 it is determined whether he can or cannot resume work,
29 or what do you do?

30 MR. OSLER: He is retained as an employee.



1 MR. ESTEY: But his status does not
2 change?

3 MR. OSLER: His status does not change.

4 THE COMMISSIONER: Is that a decision of
5 the Company in the interest of its employees, or is that
6 part of your collective agreement?

7 MR. OSLER: I don't think it is a specific
8 part of the collective agreement, as such. Mind you,
9 any question of the severance of an employee is dealt
10 with from the point of view of the collective agreement
11 as to whether he is fit or able. I think the practice
12 of this Company is to carry men on compensation for
13 certain periods on the overall expectation that they will
14 recover. The time comes, of course, when you may
15 eventually terminate, but I think I am correct in saying
16 that it would be an exception to the rule.

17 MR. ESTEY: What I^{am}/leading to is this,
18 that in the mining industry, is there a practical altern-
19 ative of light work which we have discussed here?

20 MR. OSLER: Oh, yes, I have not dealt
21 with that. We have a section on rehabilitation. We
22 very definitely take back people on light work. We get
23 a very funny type of thing from the Board where they say
24 that this man is physically fit to do all mining duties.
25 But he can't lift, he can't bend and lots of other things.
26 This is the medical end. But, we do definitely take
27 them back and we have a programme, I believe, in con-
28 junction with the Board and have very successfully worked
29 with the Board in attempting to try to rehabilitate men
30 and bring them back on light duty.



1 MR. ESTEY: Partial disability cases?

2 MR. OSLER: Try to get work when working
3 to the point where they can be fully assimilated back
4 into the work force.

5 MR. ESTEY: In these partial disability
6 cases where it is temporary, or where it is permanent,
7 you, therefore, have this optional treatment open to you
8 of paying them for some job other than that in which
9 they entered?

10 MR. OSLER: They have to be fitted in
11 in relation to your collective agreement and your
12 seniority provisions. But, you cannot put a man into a
13 job which is other than, you might say, a base rate, or
14 the lowest rate because if there is a vacancy there or
15 a position there, then it is open to be bid on by anybody.

16 MR. ESTEY: What has your Company's exper-
17 ience been under section 26 of the Act where you have
18 one of these permanent partial disabilities and you ask
19 the Board to review the allowance being paid to him?
20 While you do not have a right to cause a review to be
21 made ---

22 MR. OSLER: You mean section 25?

23 MR. ESTEY: Yes, I'm sorry, 25.

24 MR. OSLER: I couldn't tell you on that.
25 I think probably the answer has been that the Company
26 has probably read the Act as it is written, and that
27 they are not entitled to ask for a review.

28 MR. ESTEY: Depending upon whether it
29 is a lawyer or somebody else, you may or may not
30 make a request?



1 MR. OSLER: Perhaps we have advised them
2 incorrectly.

3 MR. ESTEY: On your question of damages
4 or remoteness, I take it your real submission is that
5 in this field of compensation and disability insurance
6 the common law tests are really not relevant, and the
7 real question is what is his net cash position when
8 all his subtractions have been made, or, under the
9 other alternative, they are not made?

10 MR. OSLER: I think that is correct, Mr.
11 Estey. You take an action for damages where normally
12 you are dealing with a stated particular sum; you are
13 not dealing with a pension payable over a series of
14 years, and I think you must have very careful regard
15 to this question of rehabilitation and this question
16 of malingering. As I say, I am not suggesting that all
17 workmen do it who have been injured, but human nature
18 is going to operate in this field, and if a man is
19 close to being able to make the same on^a/disability
20 pension as he was when he was working, it would be an
21 awful temptation, you know.

22 MR. ESTEY: I have one or two comments I
23 would like to make in connection with your submissions
24 about section 35. I take it what you are talking about
25 there is the cost which is imposed on employers under
26 the footnote at the end of section 42 of the Act, where
27 the burden of raising the payments to people receiving
28 compensation for old injuries has been graded.

29 MR. OSLER: Yes, this has happened over
30 a period of time.



1 MR. ESTEY: Under section 35 you get in
2 the mail an extra assessment and whether or not it be
3 amortized as an extra assessment.

4 MR. OSLER: That is right.

5 MR. ESTEY: You referred to page 5 of the
6 Annual Report of 1965 which says in this particular case
7 the eight million dollars will be amortized and we will
8 catch it from you in ten years?

9 MR. OSLER: Yes.

10 MR. ESTEY: And the suggestion was made,
11 and the Commissioner has asked you about the relief
12 valve which the employer has available, namely,
13 passing the burden on, and you dealt with your export
14 position, but I take it your submission on that point
15 goes further, but I wanted to see whether this is so:
16 whether or not you are exporting, you are still subject
17 to the competition from imports, and ^{if} this burden is
18 concentrated on a product you may lose your money?

19 MR. OSLER: Yes.

20 MR. ESTEY: So, your submission is that
21 if this is a valid claim for relief, it is a valid
22 claim against the consolidated community resources and
23 not against the single class of employer?

24 MR. OSLER: That is right.

25 MR. ESTEY: Thank you, Mr. Osler.

26
27
28 MR. ESTEY: Mr. Commissioner, the Ontario
29 Mining Association has a submission.

30 MR. PERRY: In dealing with the subjects



1 as laid out in the notice, some of our brief does not
2 quite line in.

3 THE COMMISSIONER: Well, anything that
4 has any relation to the matters we are discussing will
5 be covered.

6 MR. PERRY: We are almost in the same
7 position as the previous submission, in that it is a
8 little bit out of context. I would like to read the
9 comments in our brief starting at page 3. I think the
10 first part was pretty well covered in the previous
11 comments last week.

12 The rate of compensation in Ontario is
13 75% of average earnings up to a limit of \$6,000 per year.
14 In view of the fact that compensation payments are not
15 subject to income tax and that a workman's normal
16 everyday expenses, such as transportation, wear and
17 tear on work clothes, and payroll related charges are
18 eliminated during this time of disablement, the present
19 rate adequately preserves the living standard of
20 persons and families in these income brackets. We
21 contend, therefore, that this percentage is ample.

22 There is a marked tendency to regard the
23 payments of compensation as an alternate form of unem-
24 ployment insurance, charity, long service or old age
25 retirement plan. We do not suggest that this view is
26 necessarily held by those who administer the Act, but
27 we contend that it is a view held by the public at
28 large, by some Municipal Councils, by many doctors,
29 and even by some employers and members of the
30 Legislative Assembly. The view is equally prevalent



1 that the source of funds is the Government and that it
2 is public money. We suggest to you that these views
3 conspire to colour evidence to the degree that some
4 compensation awards now put the recipient in the position
5 that he can net as much by not working as by working.
6 As a result there is no incentive to become rehabilitated
7 or to resume self-supporting work; in other cases it
8 becomes a bonus because earning ability, in fact, has not
9 been impaired.

10 The fundamental purpose of the Act is to
11 compensate an injured workman for loss of earning power
12 brought about by an on-the-job accident. When such
13 injured workman returns to his work and has regained
14 full earnings and/or earning ability, compensation
15 for the loss of earning power should be terminated.

16 Since the last Commission reviewed the Act,
17 there have been radical changes at both the Federal and
18 Provincial levels on the concept of universal social
19 benefits involving old age pensions, government spon-
20 sored pension plans, compulsory vesting of private
21 pensions, etc., all of which have been good and effect-
22 ive, and with which we agree. It is our belief that
23 this progressive approach should be recognized in its
24 complementary effect on compensation awards and their
25 purpose.

26 Retrospective Liability

27 The Association appreciates that benefits
28 received under the Act must be adjusted from time to
29 time in order to serve the purpose for which their
30 payment was designed, and the Act has been so amended



1 on a number of occasions these changes not only affect
2 present charges to the employer but have also been
3 applied retroactively to upgrade the scale of payments
4 in respect to past accidents. In many instances the
5 employer, against whom the past accident was assessed,
6 has ceased to exist, so that the liability has had to be
7 borne by other employers.

8 We do not suggest that such increases should
9 not be made; however, we do subscribe to the view
10 expressed by the Honourable Mr. Justice Roach, that
11 this is an adjustment for social purposes. Changes in
12 awards for past accidents are of this type and their
13 increased cost should be provided for by the public at
14 large through the Consolidated Revenue Fund of the
15 Province to which all, including the employers, contribute.

16 There is only one other section that I
17 maybe should include in this, on page 6. I think they
18 all sort of tie in together.

19 THE COMMISSIONER: We have heard quite a
20 lot about it from Mr. Osler, and elsewhere, on what you
21 have just covered.

22 MR. PERRY: On page 6, under Legislation
23 and Regulations.

24 The Workmen's Compensation Act has been in
25 existence for more than half a century. During this
26 period it has been amended a number of times but,
27 basically there has been no change other than to adjust
28 to existing social conditions. It is to be expected
29 that this should and would be done. It is also to be
30 expected that this Act, which has been in effect for so



1 long and has frequently been model legislation for other
2 jurisdictions, should not require drastic or immediate
3 remedial amendment. Perhaps this is the reason that the
4 Act has only been the subject of inquiry at seventeen
5 year intervals.

6 This Association believes that rather than
7 having a formal and infrequent review of the Act with
8 relatively frequent interim amendments, it would be
9 preferable to have more frequent formal reviews with
10 necessary amendments made only after such a review.
11 We suggest this review period should be five years and
12 conducted in the same manner as this review, by a
13 Judicial Commissioner.

14 THE COMMISSIONER: If it is done every
15 five years by Judicial Commissioner, what distinction
16 do you make between an infrequent formal review
17 and a more frequent formal inquiry review. They are
18 formal reviews in any event.

19 MR. PERRY: I would call this a formal
20 review. There have been a number of amendments that
21 have been produced without the background study that
22 is being obtained in this one.

23 Under this proposal both employees and
24 employers would have equal rights and equal opportu-
25 nities to submit critical and constructive views on the
26 provisions and operation of the Act. They would also
27 have the assurance that the Act would not be changed
28 for a definite period, coupled with the knowledge that
29 it would be reviewed at a definite time.

30 THE COMMISSIONER: They will have that



1 assurance if the legislature chose to follow it and
2 didn't. Maybe if they were coming at five year intervals
3 the legislature would not act on its own in the meantime
4 and would be inclined to wait for the five year review.

5 MR. PERRY: This is what we had in mind.

6 THE COMMISSIONER: And if it were being
7 handled every five years, it might be that there would
8 not be so many matters to cover?

9 MR. PERRY: This would be our hope, sir,
10 that that would be the case.

11 I think the part on page 7, if I may read
12 it, I think it is a little bit off this outline here,
13 but it won't hurt to finish it.

14 The Act provides that the Board may make
15 such regulations as are necessary to carry out the
16 provisions of the Act. We do not question the need
17 for this authority, but we do suggest that the interests
18 of both employee and employer would be better served if
19 the proposed changes in regulations were submitted to
20 representatives of employee and employer for comment,
21 before the regulations were implemented.

22 We make this suggestion in the belief that
23 both employee and employer are well aware of the need
24 for a good and effective Workmen's Compensation Act -
25 an Act with provisions that respect and recognize the
26 interests of affected persons and parties. This part
27 is the implementation of regulations and amendments to
28 the Act which are not the same thing. I am not trying
29 to suggest that they are. I do not think there is much
30 point on my making any comment on what I have said in



1 the first part. It has been very well covered by Mr.
2 Osler.

3 THE COMMISSIONER: As far as I am concerned,
4 Mr. Perry, I think I had some knowledge of it before Mr.
5 Osler elucidated it this morning and certainly he has
6 gone into it at some length. Maybe Mr. Estey may have
7 some questions to ask, but I think it is roughly covering
8 the same ground that he has already covered. If you
9 have anything in particular that you wish to add to what
10 has been said, why certainly do it.

11 MR. PERRY: Well, Mr. Commissioner, with
12 me is a witness who can speak of a case to illustrate
13 partial disability allowance.

14 THE COMMISSIONER: Certainly we will hear
15 what he has to say.

16 MR. PERRY: J. A. Cooke is the name.

17 THE COMMISSIONER: What is your occupation,
18 Mr. Cooke?

19 MR. COOKE: Superintendent of Safety for
20 Falconbridge Nickel Mines.

21 Maybe if I summarize this just in summary
22 as if I were writing it, then I will go into any detail
23 that may be required later. This is the case history
24 of one of our employees who, while helping his partner
25 to lift a small reel jack which weighed about approx-
26 imately 60 pounds, he felt a pain in his back. He was
27 consequently, of course, immediately given medical
28 treatment, he was off work some two hundred and some
29 odd calendar days and then returned to his regular work.
30 There was no loss of earnings involved here except the



1 time, of course, he was off work for which he was com-
2 pensated.

3 Following his return, actually he was
4 given additional responsibilities with greater pay and
5 later on, some ^{three} / years following this accident, we
6 were advised that a pension would be awarded to this
7 employee and, consequently, was awarded to the tune of
8 some almost \$12,000.

9 THE COMMISSIONER: Three years following
10 the injury - at least he was off 200 days, do you say?

11 MR. COOKE: Yes.

12 THE COMMISSIONER: He returned to work at
13 his regular work?

14 MR. COOKE: This is correct.

15 THE COMMISSIONER: And then three years
16 following the accident there was an award of pension?

17 MR. COOKE: This is correct - not exactly
18 three years, I could give you the exact dates actually.
19 The employee in question was off work from February
20 7th, 1964 until September 20th, 1964.

21 THE COMMISSIONER: Have you got the number
22 there of that claim?

23 MR. COOKE: The claim number is C-6023382.

24 THE COMMISSIONER: He had not been off in
25 the intervening period before the award of pension?

26 MR. COOKE: No, he returned directly to
27 regular work and at the same rates of pay and, as I said,
28 was given additional responsibilities and an increase
29 in pay and then, in June of 1966, we were informed that
30 a pension would be awarded to this amount of \$11,822.,



1 giving this employee \$53.25 per month, retroactive to
2 September 21st, 1964.

3 THE COMMISSIONER: In other words, that was
4 a capitalized pension of \$53.00 a month?

5 MR. COOKE: This is correct. The only
6 point I think we want to make is that it is our feeling -
7 I think it is a wonderful thing, these pensions and what
8 not that they should be awarded, we feel, where there
9 is a loss of earnings. I think this could be misconstrued
10 to be an incentive to have an accident.

11 THE COMMISSIONER: You, of course, would
12 not carry that to the extreme where somebody had suffered
13 the loss of a limb or something?

14 MR. COOKE: No, I think this is a little.
15 different. There was no loss of limbs or anything.

16 THE COMMISSIONER: I understand that. I
17 may be wrong, but I think the Board is entitled to look
18 at it from two standpoints, one, the physical disability
19 and, two, the loss of earnings. They can and do, do
20 they not in assessing it, consider it from both angles?

21 MR. COOKE: I would imagine so. They gave
22 it a lot of consideration here. We did appeal this
23 case, of course.

24 THE COMMISSIONER: You did appeal it?

25 MR. COOKE: We did appeal the case and we
26 were told verbally that we would only be charged for
27 fifty percent of the pension after the appeal. It is
28 not a matter of the pension, it is a matter of the
29 principle that we appealed this case on in the first
30 place.



1 THE COMMISSIONER: You were told you would
2 only be charged fifty percent?

3 MR. COOKE: Apparently there would be some
4 accounting at the end of the year and fifty percent of
5 this pension would be charged or transferred to the
6 second injury fund.

7 THE COMMISSIONER: That appeal was actually
8 heard, was it?

9 MR. COOKE: Well, it certainly must have
10 been discussed because I received a verbal report to
11 this effect.

12 THE COMMISSIONER: When you say you appealed
13 it, did you appear on the appeal?

14 MR. COOKE: No, just appealed it in writing
15 by letter.

16 THE COMMISSIONER: Just appealed it by
17 letter and there was a subsequent decision of the
18 Review Board or something of the kind and this is what
19 you were told?

20 MR. COOKE: Yes.

21 THE COMMISSIONER: Was there any explanation
22 of why the pension was there, or anything along that
23 line?

24 MR. COOKE: No, nothing in detail.

25 THE COMMISSIONER: Is that all you have to
26 say about the case?

27 MR. COOKE: That is all.

28 THE COMMISSIONER: Is there anything else
29 you have?

30 MR. COOKE: No, that is all I have.



1 MR. ESTEY: Mr. Cooke, on this question of
2 this back injury, I presume from the fact that he picked
3 up a 60 pound jack he hurt his back?

4 MR. COOKE: That is right.

5 MR. ESTEY: Was there any history of a prior
6 injury?

7 MR. COOKE: I think in this case there was.

8 MR. ESTEY: The prior injury was investiga-
9 ted by the Board, I take it, and was the subject of an
10 earlier award or a disclaimer of any compensation
11 liability?

12 MR. COOKE: I am not too sure about this.

13 MR. ESTEY: So we know there was a prior
14 injury and then, as a result of this injury, was there
15 any surgery performed?

16 MR. COOKE: Not to the best of my knowledge.

17 MR. ESTEY: There was no spinal fusion or
18 anything like that?

19 MR. COOKE: No.

20 MR. ESTEY: Then, when the award was handed
21 down, how did Falconbridge find out about it?

22 MR. COOKE: This most recent one?

23 MR. ESTEY: When you first heard the man
24 was going to get a pension of \$53.22 a month, how did
25 the company find out about that?

26 MR. COOKE: By letter from the Board.

27 MR. ESTEY: Then, as a result of that
28 letter, you wrote a letter back and said something to
29 the effect, "We would like you to review this decision."

30 MR. COOKE: This is correct.



1 MR. ESTEY: And then, in return, you received
2 a letter, did you?

3 MR. COOKE: I did not, all I received was
4 a verbal report by telephone.

5 MR. ESTEY: Somebody telephoned you from
6 the Board?

7 MR. COOKE: That is correct.

8 MR. ESTEY: Do you know what part of the
9 Board it was that phoned you, ^{what} the division was or
10 department?

11 MR. COOKE: I think it was the Accounting
12 Department, I believe.

13 MR. ESTEY: They advised you that the
14 decision would be maintained but that only half the
15 pension would be charged to the fund to which Falcon-
16 bridge contributes?

17 MR. COOKE: And that this change would
18 take place at the year end.

19 MR. ESTEY: You would adjust it each time
20 at the end of the year?

21 MR. COOKE: Yes.

22 MR. ESTEY: Did the company appeal that
23 decision to the Appeal Tribunal?

24 MR. COOKE: No.

25 MR. ESTEY: Is there any reason why the
26 company did not? Were you aware that you could?

27 MR. COOKE: I was not aware then that I
28 could, not to the Appeal Tribunal. We appealed it to
29 the Pension Board.

30 MR. ESTEY: Did you end up with any hearing



1 of any kind?

2 MR. COOKE: No.

3 THE COMMISSIONER: This was in 1966. I
4 suppose you probably got a report from the Review
5 Committee, did you?

6 MR. COOKE: No, we have not heard anything
7 further to date.

8 THE COMMISSIONER: Then who did you get
9 your report from, the Review Committee of the Board or
10 the Appeals Tribunal?

11 MR. COOKE: I think it was through the
12 Department of Pensions.

13 MR. ESTEY: But you got nothing in writing
14 after appealing it?

15 MR. COOKE: No.

16 THE COMMISSIONER: And nothing to say you
17 had the right to appeal further if you chose?

18 MR. COOKE: That is right.

19 MR. ESTEY: So, in effect, this occurred
20 in June of 1966, this is last June, and what you are
21 saying, Mr. Cooke, is that this does not seem to have
22 gotten into the appeal track at all?

23 MR. COOKE: No, it just came like a bolt
24 out of the blue, nothing leading up to it whatsoever.
25 We had no knowledge of it.

26 MR. ESTEY: Nor has the company any
27 medical records or information about this man's present
28 condition?

29 MR. COOKE: Very, very little.

30 MR. ESTEY: Are you saying to the



1 Commissioner that this man is now, from all outward
2 appearances, capable of doing the same work he was
3 doing before he was injured?

4 MR. COOKE: This is correct, yes.

5 MR. ESTEY: There is no evidence that one
6 can observe any disability that affects his work?

7 MR. COOKE: That is right.

8 THE COMMISSIONER: What is the nature of
9 his work?

10 MR. COOKE: He is a tradesman.

11 MR. ESTEY: What does he do?

12 MR. COOKE: An electrician, first-class
13 electrician.

14 MR. ESTEY: And he was at the time of the
15 accident an electrician?

16 MR. COOKE: A second-class electrician.

17 MR. ESTEY: And you say he was also
18 promoted after he came back to work?

19 MR. COOKE: Yes.

20 MR. ESTEY: What was he promoted to?

21 MR. COOKE: First-class electrician.

22 MR. ESTEY: That is a change in rate?

23 MR. COOKE: A change in rate with some
24 added responsibility.

25 MR. ESTEY: Any change in physical work,
26 more or less arduous?

27 MR. COOKE: I think it would be about the
28 same, I would think.

29 MR. ESTEY: This qualified him to work
30 on more important parts of the electrical system of the



1 mine?

2 MR. COOKE: This is correct.

3 MR. ESTEY: And there has been no history
4 of accident or time off for illness since his return
5 to work in September, 1964?

6 MR. COOKE: No, not to my knowledge.

7 MR. ESTEY: Thank you, Mr. Cooke.

8 THE COMMISSIONER: We are a little late
9 in taking a break, I think we will resume at ten minutes
10 to twelve, not quite as long.

11
12 ---Short recess.

13
14 MR. ESTEY: Mr. Perry, on the topic of
15 your proposal that matters be reviewed, I see that in
16 part of your brief on page 3, you say that the present
17 rate of compensation adequately preserves the living
18 standards of persons and their families. I am wondering
19 whether you are, in fact, suggesting that if these
20 reviews are not held on some periodic basis that this
21 compensation question be somehow linked to the cost of
22 living.

23 MR. PERRY: Well, I do not want to suggest
24 it directly, but I think indirectly that has been the
25 case all along anyway.

26 MR. ESTEY: On the basis of seventeen year
27 reviews or legislative reviews.

28 MR. PERRY: I think there have been
29 legislative reviews and I can't think of any reason
30 why it be adjusted except for that.



1 MR. ESTEY: And you are content to leave
2 it on the adjustment basis subject to the reviews
3 periodically, rather than hook it into the cost-of-
4 living index, if there is such a thing?

5 MR. PERRY: Yes, that is right.

6 THE COMMISSIONER: If it is hooked into
7 the cost-of-living index, then so far as the pension of
8 that particular person is concerned, no review would
9 be necessary. I am talking about future pensions. A
10 review, in other words, would only be necessary to
11 consider updating pensions that have been awarded on
12 some other basis.

13 MR. PERRY: I don't know whether I quite
14 follow you.

15 THE COMMISSIONER: In British Columbia --
16 you are acquainted with what occurred there -- future
17 pensions are geared to the consumer index increase or
18 decrease. Now, so far as they are concerned, a review
19 would serve no useful purpose, would it?

20 MR. PERRY: Not for those people.

21 THE COMMISSIONER: But if it were not
22 geared in that way, then a review from time to time
23 would be necessary, one, I suppose, in connection with
24 this minimum or maximum earning figure, but as far as
25 the other is concerned, payment for past pensions,
26 that you say should not be a matter for the Compensation
27 Board?

28 MR. PERRY: It is social.

29 THE COMMISSIONER: It should be for the
30 legislature?



1 MR. ESTEY: One last question, Mr. Perry:
2 You said in your brief that the purpose in the Act is
3 to compensate an injured workman for loss of his earning
4 power and that, therefore, when he resumes his capacity
5 to earn, there should be no further compensation. All
6 of that is on page 4 of your brief.

7 MR. PERRY: Yes.

8 MR. ESTEY: Now, The Commissioner asked
9 Mr. Cooke a question concerning continuing disability
10 which might not have any effect on his earning power
11 and your brief does not say what position you take on
12 that. Are you saying that an impairment of ability
13 to enjoy life or to do work which he is not doing at
14 the time of the injury should not be compensated?

15 MR. PERRY: No, I would not want to suggest
16 that.

17 MR. ESTEY: But your loss of earnings,
18 then, when he regains full earnings he does not
19 necessarily, therefore, lose the right to compensation;
20 is that your position?

21 MR. PERRY: On these more obvious cases
22 of disability and the loss of physical ability.

23 MR. ESTEY: Therefore, in the case of
24 claim number 6023382, if he had lost an arm and gone
25 back to the same job -- which, of course, he could not
26 have done, but had he had a different type of job he
27 might have been able to -- then, you say that he may
28 still be entitled to some compensation even though
29 he earned at least as much after he went back to work
30 as before he was hurt?



1 MR. PERRY: I would not want to say that he
2 wasn't.

3 MR. ESTEY: Wasn't what?

4 MR. PERRY: Was not eligible.

5 MR. ESTEY: But in the case of the back
6 ailment, because you cannot see the loss of ability,
7 there is some doubt; that is about the highest level
8 on which you can put that case?

9 MR. PERRY: I think so.

10 THE COMMISSIONER: Thank you, Mr. Perry.

11 MR. ESTEY: Mr. Commissioner, those are
12 all the briefs that people have indicated to us wish
13 to be presented on the topic of benefits. If there
14 is anybody here who has not been heard and who wishes
15 to be heard, would they kindly now speak up? Those who
16 have not been dealt with by such a presentation, Mr.
17 Commissioner, we are going to follow the same practice
18 as we did in connection with the first two topics, and
19 ask Mr. Guthrie to read those briefs. There are two
20 exceptions to this: the Automotive is going to appear
21 and present their brief tomorrow, and the Construction
22 Association is going to do the same thing on Thursday
23 morning. Now, subtracting those people from the list,
24 together with those who have appeared ----

25 THE COMMISSIONER: Mr. Estey, I have read
26 these briefs. I am sure the people who will appear for
27 the Workmen's Compensation Board will have read them
28 and, to a substantial degree, they are repetitive.
29 We have had some of it here this morning, and there
30 will be some more of it there. May I suggest to Mr.



1 Guthrie, as he comes to these, that perhaps, and if he
2 has not had an opportunity of doing it now, perhaps he
3 could do it to some extent as he goes along, without
4 reading it all, and perhaps at lunch time he could cut
5 it down further, and just comment on what has been
6 said and read out the parts that raise new issues or
7 questions. Can we proceed on that basis?

8 MR. ESTEY: Yes, Mr. Commissioner. In
9 fact, that is the basis that is certainly agreeable to
10 all of us. Perhaps it would be expeditious to have
11 the Board testify now and Mr. Guthrie could read the
12 tag ends which have not been dealt with after that.

13 THE COMMISSIONER: That is fine, but
14 at times since some of the members of the Board have
15 read them too, you can do it according to the way they
16 feel about it, or whether you wish to bring to their
17 attention or our attention anything in particular in
18 those briefs that have not already been brought to our
19 attention in the last two days. I should add that
20 not only have members of the Board seen these briefs
21 and members of the Commission and staff; but, to a
22 large extent, the other interested parties here today
23 have seen the briefs as well. Well, how do you wish
24 to proceed?

25 MR. ESTEY: It does not matter to us. If
26 the Board is prepared to proceed.

27 MR. KERR: We are prepared.

28 MR. ESTEY: Then, perhaps that might be
29 the best procedure.

30 MR. MacDONALD: Mr. Commissioner, my name



1 is Allan MacDonald. I am Treasurer of the Workmen's
2 Compensation Board, and my associates today are Dr.
3 Margaret Wood, our Medical Statistician, our Comptroller,
4 Mr. J. R. Greaves, and Mr. William Kerr. What we
5 propose to do today is to present for the information
6 of the Royal Commission, statistics relating to the
7 cost of benefits which have been recommended in various
8 briefs. Under the heading of Benefits and Statistics,
9 we are presenting, for the information of the Royal
10 Commission, the following tables which indicate the
11 potential cost of the benefit increases requested.
12 Some historical tables of statistics are presented as
13 background material. Retroactive increases in benefits
14 have to date been charged to employers and eventually,
15 therefore, have been borne by the consumer of goods and
16 services.

17 Cost of Living Basis for Pensions

18 It is extremely difficult to estimate the
19 cost of tying benefits to the cost of living index.
20 The original estimate made by authorities in British
21 Columbia when their plan introduced this feature was
22 that the cost of future benefits would be \$20,000,000.

23 THE COMMISSIONER: What do you mean by
24 that?

25 MR. MacDONALD: As a capitalized cost
26 of the tying of the various pensions to the cost of
27 living index.

28 THE COMMISSIONER: All existing pensions --
29 but the Tysoe Report did not recommend that, did it?
30 It only went to those pensions which were developed



1 year by year? Did they go further in their legislation
2 and tie it to all pensions?

3 MR. MacDONALD: Yes, sir, there was some
4 adjustment of all pensions.

5 THE COMMISSIONER: And they assess the cost
6 of that at \$20,000,000?

7 MR. MacDONALD: Yes. Eventually, the
8 actuarial cost was established at \$47,714,000. on the
9 assumption that the average annual increase for all
10 future years in the cost of living index would be 2%.

11 Inevitably, any estimate of the potential
12 cost of tying pensions to a cost of living index would be
13 subject to many adjustments over the years following
14 such an amendment.

15 Other Supplemental Benefits

16 Because Workmen's Compensation is an
17 important social benefit in the Canadian system of
18 benefits, it is imperative that liaison be established
19 with other authorities who are entering the field of
20 providing disability and dependancy benefits.

21 THE COMMISSIONER: What other supplemental
22 benefits are you referring to?

23 MR. MacDONALD: Basically, the most
24 important one is the Canada Pension Plan. It does
25 now for both disability and dependancy pensions and,
26 undoubtedly, will in future years be adjusted as the
27 economy changes.

28 THE COMMISSIONER: It provides for both
29 disability and old age pension?

30 MR. MacDONALD: Disability and old age



1 and dependancy. There are also widow's pensions and
2 children's pensions provided for.

3 THE COMMISSIONER: Did you refer to
4 something else besides the Canada Pension Plan as a
5 supplemental benefit?

6 MR. MacDONALD: There is also in effect
7 now a number of private plans where benefits are payable
8 in addition to Workmen's Compensation in individual
9 cases.

10 THE COMMISSIONER: You mean where there is
11 a collective agreement or something?

12 MR. MacDONALD: Or where the workman may
13 have purchased his own private policy.

14 THE COMMISSIONER: Well, I don't think
15 we have to consider that one.

16 MR. MacDONALD: The point we are making,
17 Mr. Commissioner, is that with the introduction
18 officially in a governmental scheme of this type of
19 situation, we believe that planning for changes
20 in this field for the future should be taken on a
21 co-operative basis.

22 THE COMMISSIONER: When you start talking
23 about taking it on a co-operative basis, I suppose you
24 mean that there would be some adjustment between the
25 pension payable by one scheme, or maybe some reduction
26 in the pension payable by the Workmen's Compensation
27 Board in view of the fact of the other scheme?

28 MR. MacDONALD: This particular point has
29 been a matter of concern. It was discussed at the
30 Association of the Workmen's Compensation Boards at



1 the recent meeting in Prince Edward Island. There was
2 absolutely no liaison in the discussion between the
3 various Boards and the Canada Pension Plan authorities
4 when they introduced this feature into their plan. We
5 are concerned, has been expressed by other persons
6 here, that there will come a point at which, if this
7 situation develops uncontrolledly, that the after
8 accident benefit will be greater than the wage before-
9 hand.

10 THE COMMISSIONER: Yes, the man under the
11 two schemes -- it would be more profitable to stay at
12 home than to go to work?

13 MR. MacDONALD: That is right.

14 THE COMMISSIONER: Then, when we get into
15 this, we are dealing here with a Provincial enactment
16 and the Canada Pension Plan is a Dominion one.

17 MR. MacDONALD: We certainly appreciate
18 the many problems.

19 THE COMMISSIONER: All I have in mind
20 is this: Does it call for something beyond the scope
21 of this Inquiry? Does it have to go to some other
22 Inquiry, or perhaps prior to that inquiry some co-
23 ordination of the two services between the Province
24 and the Dominion on what might be done; or perhaps an
25 inquiry prior to that.

26 MR. MacDONALD: I believe it is beyond
27 the scope of this inquiry, sir. I think really, as
28 Mr. Justice Tysoe did, it could be indicated that this
29 is a problem that does require study and it should be
30 taken on by the proper authorities.



1 THE COMMISSIONER: No steps, as far as
2 you know, have been taken? At this recent conference
3 in Prince Edward Island, there was no indication that
4 steps had been taken?

5 MR. MacDONALD: No.

6 THE COMMISSIONER: Well, it seems to be
7 one of the pressing demands. This is one of the things
8 you say you propose to deal with here?

9 MR. MacDONALD: Sir, ⁱⁿthe comments we are
10 making, we are being very careful to play our role as
11 administrators and remaining neutral in the situation?
12 We felt in this particular case we should point out
13 this was a requirement.

14 THE COMMISSIONER: I have also - you do
15 not need to feel embarrassed by the fact that the
16 Board is bring^{ing}this information forward. This is
17 information that I want and that I have to have and,
18 at the moment, the Board with the statistical facil-
19 ities, is in a position to give it to me and I hope
20 that you will as far as you are able.

21 MR. MacDONALD: Dealing specifically with
22 that, sir, we have an index of the historical tables
23 that we have developed which will give you some
24 background information concerning the changes in costs
25 which have occurred in all of industry in Schedule 1
26 and, specifically, in the two industries who have made
27 particular points about their changing accident costs,
28 that is, the nickel industry and the motor vehicle
29 manufacturers' association.

30 THE COMMISSIONER: Well, Mr. MacDonald,



1 you are furnishing these to me now. Would it be possible
2 to have copies available for the other people? There
3 are not so many.

4 MR. MacDONALD: We will be pleased to make
5 copies available to any person.

6 THE COMMISSIONER: Anyone who wishes copies
7 can receive them from the Board.

8 MR. MacDONALD: Yes, sir.

9 THE COMMISSIONER: Just contact your Mr.
10 Kerr, I suppose?

11 MR. MacDONALD: Yes, sir.

12 Table 1 - this deals with the cost of
13 retroactively increasing disability and dependancy
14 pensions.

15 Table 2 is the increase in accident cost
16 between 1960 and 1965 for Schedule 1 and for Rate
17 No. 306, which is the motor vehicle manufacture group.

18 Table 3 is a similar table, dealing with
19 the mining of nickel.

20 Table 4 gives a summary of medical aid
21 costs changes from 1960 to 1965.

22 Table 5 gives the cost, to the best of our
23 ability, to estimating of the change in definition of
24 "Accident".

25 Table 6 gives the cost of change in the
26 waiting periof from 5 to 3 days.

27 MR. ESTEY: Is that working or calendar?

28 MR. MacDONALD: To our calendar day basis.
29 This is a hisorical table of what happened when we
30 changed from 5 to 3 days.



1 THE COMMISSIONER: You have always been
2 on a calendar day basis?

3 MR. MacDONALD: We have always been on a
4 calendar day basis.

5 Table 7 gives the same information about
6 definition of accident and change in the waiting period
7 for the motor vehicle group and the nickel group.

8 THE COMMISSIONER: Specifically, Tables
9 4, 5 and 6 are with relation to rate number 306 and
10 number 076, is that right?

11 MR. MacDONALD: That is right. I might
12 comment that, actually, the representatives of the
13 nickel group did not particularly emphasize the effect
14 of waiting period in their case so all we have calculated
15 in their case is the change in the definition of
16 "Accident". It was the motor vehicle group who
17 emphasized the effect of the change in the waiting
18 period.

19 MR. ESTEY: Mr. Kerr, would you have a copy
20 of this brief you could give to people who are obviously
21 involved in this now?

22 MR. KERR: I don't right now, sir.

23 MR. MacDONALD: We will work with one
24 copy here, and Mr. Greaves will turn over his copy.

25 MR. ESTEY: Don't do that if you need it
26 to follow. He can give it to them at noon.

27 MR. MacDONALD: Table 9 gives details
28 of the breakdown of the average earnings for total
29 disability awards during a three month period in 1965
30 and also notes the change which took place for a similar



1 period in 1966. The purpose of this is to show the
2 distribution of cases where earnings in excess of
3 \$6,000 actually occurred.

4 THE COMMISSIONER: You said average earn-
5 ings. Actual earnings it should be, should it not?

6 MR. MacDONALD: These are actual average
7 earnings, as determined by the Compensation clerk
8 when they were determining the Board's award.

9 Under the heading of Retroactively Increased
10 Disability and Dependancy Pensions, we have had actually
11 four such amendments. The Amending Act of 1948
12 increased existing widows' pensions to \$50. per month,
13 children's pensions to \$12. per month, and orphans'
14 pensions to \$20. per month. The full capitalized value
15 of this increase was charged directly to the employers
16 concerned in the year of the amendment. Actually,
17 for rating purposes in cases where a deficit developed,
18 the amount of the deficit was recovered over a three
19 year period, as has been noted previously. It was
20 charged as a capitalized sum in that year.

21 The amending act of 1960 increased exist-
22 ing widows' pensions to \$75. per month, children's
23 pensions to \$25. per month, and orphans' pensions to
24 \$35. per month. As far as Schedule 1 is concerned,
25 the costs of this amendment were charged on a current
26 cost basis for the years 1960, 1961 and 1962, as
27 indicated in the attached table. At December 31, 1962,
28 the remaining outstanding costs were amortized over a
29 ten year period. The ten year amortized cost of this
30 amendment amounted to \$667,639.



1 THE COMMISSIONER: I enquired previously
2 and I understand that no part of these increased costs
3 provided in the Act of 1960 or in any of these Acts was
4 recovered from the existing fund; in every case there
5 was new capitalization set up to take care of it?

6 MR. MacDONALD: This is correct, sir.

7 Amending Act 1963 increased existing
8 children's pensions to \$40. per month, and orphans'
9 pensions to \$50. per month. The ten year amortized
10 cost of this amendment for Schedule 1 amounted to
11 \$274,438.

12 THE COMMISSIONER: When you say the ten
13 year --

14 MR. MacDONALD: This is the annual amount
15 I am quoting, sir.

16 THE COMMISSIONER: The annual amount?

17 MR. MacDONALD: That is right, sir.

18 The amending act of 1965 brought all
19 permanent disability pensions to a 75% basis, subject
20 to the following minimums:

21 Minimum pension \$100. per month when 100%
22 disabled, regardless of earnings at the time of
23 accident.

24 When earnings between \$100.01 and \$150., pension
25 at 100% is actual earnings.

26 When earnings between \$150.01 and \$200., pension
27 at 100% is \$150.
28

29 When earnings over \$200., pension at 100% is 75%
30 of earnings.



1 The ten year amortized cost of this amend-
2 ment for Schedule 1 amounted to \$1,028,358.

3 Table 1 gives the capitalized sum that
4 would have been involved.

5 THE COMMISSIONER: What section of the Act
6 now provides that?

7 MR. MacDONALD: Section 43, sir.

8 THE COMMISSIONER: I don't see anything
9 about anything over \$200. there.

10 MR. MacDONALD: We are pointing out, sir,
11 that at \$200., the 75% factor becomes operative. Up
12 until then, this minimum takes over.

13 THE COMMISSIONER: Oh, I see. I am not
14 as well acquainted with that as you are although I am
15 trying to be.

16 MR. MacDONALD: You will notice under
17 the third column of Table 1, we have detailed the
18 capitalized cost of these various amendments had they
19 been capitalized rather than amortized over the ten
20 year period and in the case of the amendment of April
21 1, 1960, we have given you the amount of the current
22 cost, amounts that were charged in the years 1960, 1961
23 and 1962.

24 We have already said that the capitalized
25 amount of the first amendment in 1948 was \$3,841,000.
26 The full capitalized cost of the amendment of April
27 1, 1960, had it been capitalized at that time, was
28 \$9,894,000, odd. Three years later, had it been
29 capitalized at that point, the amount of the capitaliza-
30 tion would have been \$5,575,000.



1 THE COMMISSIONER: I have not followed that
2 exactly. The total capitalized cost, had it been
3 capitalized as of April 1st, 1960, would have been what,
4 \$9,894,000? Then a certain amount was capitalized in
5 the years 1960, 1961 and 1962, but not all, is that
6 what you say?

7 MR. MacDONALD: It was not capitalized,
8 sir, the current payments as provided by benefit were
9 really charged as payments, that is, the monthly pension
10 was charged ^{as} if it had been temporary compensation.

11 THE COMMISSIONER: I see.

12 MR. MacDONALD: Then it amounted to these
13 amounts in the years as indicated.

14 THE COMMISSIONER: So that was not an
15 amortized cost in that case?

16 MR. MacDONALD: There was no operation
17 of interest there.

18 THE COMMISSIONER: I see, in speaking
19 about the Act, you say that ten year amortized cost
20 of this amendment amounted to \$667,639.

21 MR. MacDONALD: Yes, sir, if you look at
22 the next line this is for Schedule 1 --

23 THE COMMISSIONER: I see. In 1960, 1961
24 and 1962, they charged those amounts only and then in
25 1963 they capitalized the balance amortized over a ten
26 year period?

27 MR. MacDONALD: In effect, what we are
28 saying is that the full capitalized cost for Schedule
29 1 at that point was \$5,575,000 which is being
30 amortized over the next ten years at the rate of



1 \$667,639. per year.

2 THE COMMISSIONER: And a substantial part
3 of that is going to have to continue to be amortized
4 over the next six or seven years?

5 MR. MacDONALD: This is right, sir.

6 The capital amount required as of December
7 31st, 1965, which is the next column on account of that
8 amendment, had it been capitalized, was \$4,139,000.

9 THE COMMISSIONER: Had it been capitalized
10 as of that date. It had not been and has been amortized
11 over the first seven years to come.

12 MR. MacDONALD: Over ten years, sir.

13 THE COMMISSIONER: Ten years from that
14 date?

15 MR. MacDONALD: Ten years from January 1st,
16 1963.

17 THE COMMISSIONER: Ten years from 1963?

18 MR. MacDONALD: Yes, a ten year period
19 would be 1963 to 1972, inclusive.

20 THE COMMISSIONER: But actually, it was
21 not capitalized at that date and, as a consequence,
22 this amortization of \$667,639. has been paid in one
23 year?

24 MR. MacDONALD: 1963, 1972, inclusive.

25 THE COMMISSIONER: It will go from 1963
26 to 1972?

27 MR. MacDONALD: That is right.

28 The amending act of 1963 increasing
29 children's pension at a full capitalized cost of
30 \$2,798,000. which is being amortized over a ten year



1 period at the rate of \$274,438. per year and as at
2 December 31st, 1965, had an outstanding capitalized
3 cost of \$1,701,000.

4 The amending act of 1965, which brought
5 all pensions to a 75% basis and established minimums
6 wages bases for all pensions at a full capitalized cost
7 of \$10,146,000. and, an amortized ten year cost of
8 \$1,028,358.00., and an outstanding capitalized cost
9 as at December 31st, 1965 of \$7,881,100.

10 THE COMMISSIONER: So that in 1966,
11 industry was carrying these last three items year by
12 year amounting to about \$1,900,000., almost \$2,000,000?

13 MR. MacDONALD: That is correct, sir.

14 THE COMMISSIONER: You may be able to
15 tell us later how this is to be looked at. We can see
16 it with particular things like the motor vehicle
17 operation, and so on.

18 MR. MacDONALD: We have details as to
19 what it will cost exactly.

20 THE COMMISSIONER: As to the payroll or
21 the value of the product, or overall?

22 MR. MacDONALD: Mr. Greaves is working
23 out for us the effect on assessment as a percentage
24 if you would care to have that.

25 THE COMMISSIONER: The assessment shown
26 as a percentage of the payroll?

27 MR. MacDONALD: Well, the percentage,
28 basically, the same thing no matter how you look at it,
29 sir.

30 THE COMMISSIONER: All right, thank you.



1 MR. MacDONALD: Table 2 shows the increase
2 in accident costs between 1960 and 1965 for all of
3 Schedule 1 and Rate No. 306, which is the manufacturer
4 of motor vehicles.

5 Sir, with your permission, I will read
6 the first and last year and we can answer questions
7 about intervening years if they are significant.

8 THE COMMISSIONER: Well, the increase
9 from 1960 to 1965 on Schedule 1 was from \$20,000,000.
10 to \$33,000,000, an increase of \$13,000,000. over
11 \$20,000,000., but under 306 it was from \$200,000. to
12 \$800,000. You will explain those things, no doubt.
13 That, I suppose, depends on the size of the payroll
14 and various other things?

15 MR. MacDONALD: Yes, sir.

16 THE COMMISSIONER: Related to their own
17 accident costs in that particular industry. It varies
18 with these different classifications, this one may be
19 higher in the amount of capitalized cost it carries?

20 MR. MacDONALD: I think when we get to
21 the next table which deals with nickel, you will see
22 there is a much different picture which will be, I
23 think, significant and has a relationship to the
24 economic factors in the industry.

25 THE COMMISSIONER: But in any event, in
26 this Table, you have given us compensation increase
27 from year to year both under 306 and under Schedule 1,
28 capitalized values. I suppose when you show capitalized
29 values, that means that these are permanent disability
30 pensions that have been awarded.



1 MR. MacDONALD: And dependancy awards to
2 widows and children. May I suggest that I quote the
3 dollar amount and the percentage increase for each of
4 these factors, and then we can discuss the background
5 further.

6 THE COMMISSIONER: Yes.

7 MR. MacDONALD: As far as compensation for
8 total temporary awards are concerned, the dollar amount
9 of compensation for Schedule 1 has gone up from
10 \$20,000,000. odd in 1960 to \$33,000,000. in 1965, which
11 is a 65.2 percent increase.

12 THE COMMISSIONER: Yes. Now, that is for
13 all compensation?

14 MR. MacDONALD: That is for all compensa-
15 tion, of temporary awards, and for all of Schedule 1.
16 In Rate No. 306, it has gone up from \$200,000. to
17 \$861,000., which is a 328 percent increase. Under
18 capitalized values for pensions, that is, either
19 disability or dependancy, it has gone up from
20 \$14,000,000. in 1960 to \$22,000,000. in 1965 for all
21 of Schedule 1, a 54.4 percent increase; in the case
22 of the motor vehicle group, it has gone from
23 \$67,000. to \$322,000., which is a 377 percent increase.
24 Medical aid for payment of doctors and hospitals for
25 all of Schedule 1 has gone up from \$13,000,000. in
26 1960 to \$20,000,000. in 1965, a 50.9 percent increase.
27 For the motor vehicle group it has gone from \$138,000.
28 to \$440,000. for a 227 percent increase. If you take
29 the total accident costs, Schedule 1 has increased
30 from \$48,000,000. in 1960 to \$76,000,000. in 1965, a



1 58 percent increase. For the motor vehicle group, it
2 has gone from \$407,000. in 1960 to \$1,624,000. in 1965,
3 for a 298.6 percent increase.

4 THE COMMISSIONER: I don't know whether
5 we should do this now or later on, but of the 65 per-
6 cent increase in compensation in Schedule 1, how much
7 of that increase was accounted for by capitalized values
8 and how much by medical aid? Does some subsequent
9 table give us that?

10 MR. MacDONALD: This table does give it
11 to you, sir. You see, the first table is compensation
12 only, that is, payments of total temporary compensation.

13 THE COMMISSIONER: It could be worked out,
14 I suppose?

15 MR. MacDONALD: I think there is a relatively
16 stable increase as between the three factors in Schedule
17 1. It is 65, 54, 50 and an average of 58 for the total
18 as far as percentages are concerned. I think also
19 that we do not have the full effect of current wage
20 basis in the capitalized values as shown here because
21 one of the witnesses this morning talked about permanent
22 disability award being made some time after the
23 accident. It is the Board's policy to wait until the
24 maximum degree of healing has taken place before a
25 permanent disability award is made. So, therefore, on
26 the average capitalized awards for pension are approx-
27 imately two years after the date of the happening of
28 an accident. I am suggesting that the 65.2 percent
29 increase you see in compensation here will eventually
30 be affecting the capitalized values a year or so from
now.



1 MR. ESTEY: Mr. MacDonald, would it help
2 you -- it would certainly relieve my confusion if I
3 asked you one question ~~which~~ may clear it up at
4 this stage before you leave this table: Under the
5 heading "Compensation", Schedule 1 for 1960, you show
6 a figure of \$20,000,000. odd dollars. That means you
7 actually paid that money out?

8 MR. MacDONALD: That was paid out during
9 that year.

10 MR. ESTEY: To people who had temporary
11 disabilities -- cash distributions?

12 MR. MacDONALD: Yes.

13 MR. ESTEY: The next column is Capitalized
14 Values and there you have under Schedule 1, \$14,000,000.
15 odd. I take it you did not pay that money out, but you
16 set it aside so that you could pay out the awards in
17 future years?

18 MR. MacDONALD: That was put in our
19 pension fund for that purpose.

20 MR. ESTEY: So the effect is that you
21 drain from the fund \$34,000,000. odd dollars in that
22 year either for temporary disability payments in that
23 year or to fund future pension liabilities of the
24 Board?

25 MR. MacDONALD: That is correct.

26 MR. ESTEY: Then, in addition to that,
27 the Board wrote cheques for medical aid totalling
28 Thirteen ~~odd~~ million dollars, so that the total pay
29 out from the primary fund, if I can use that loose
30 word, would be \$48,000,000.



1 MR. MacDONALD: Yes, sir. Are there any
2 other questions with respect to this Table?

3 THE COMMISSIONER: I think I have followed
4 you so far and Mr. Estey has no further questions.

5 MR. MacDONALD: Table 3 presents similar
6 information relating to the mining or the nickel, and
7 here we have a different situation as it relates to
8 the percentage factor for the industry.

9 THE COMMISSIONER: In other words, the
10 Schedule 1 figure is the same on this Table 3, but you
11 are now giving us the rate for No. 076?

12 MR. MacDONALD: That is right. In 1960,
13 the accident cost for Rate 076 was \$423,000. and in
14 1965, it was \$650,000., which is a percentage increase
15 of 53.4, which is less than the Schedule 1 average of
16 65.2 percent, which we quoted previously. As far as
17 capitalized values for pensions is concerned, in 1960
18 the cost was \$527,000. and in 1965 it was \$657,000.,
19 an increase of 24.7 percent, compared with the Schedule
20 1 average of 54.4. Medical aid in 1960 was \$241,000.,
21 and in 1965, \$406,000., an increase of 68.2, compared
22 with the average for Schedule 1 of 50.9. Dealing with
23 totals, accident costs for 1960 were \$1,192,000; in
24 1965, \$1,713,000., an increase of 43.7, compared with
25 the average for Schedule 1 of 58.0 percent.

26 MR. ESTEY: Somewhere, do you have the
27 payroll increase for that industry for those years so
28 you could see whether there is any relationship
29 between the expansion of the industry to the increased
30 pay-out?



1 MR. MacDONALD: They are not directly
2 presented, but we can get you that information.

3 THE COMMISSIONER: You might also give us
4 information as to how great an increase there was in
5 the labour staff in those industries.

6 MR. MacDONALD: Table Number 4 shows the
7 breakdown within medical aid for the years 1960 to 1965
8 between doctors, hospitals and other items which are
9 paid in the medical aid category. It is intended to
10 show the breakdown as between the two groups that are
11 having some effect on this particular cost. I don't
12 think anyone has made any representations about this
13 but we thought it might be useful for you to see this.
14 This is the total for Schedule 1 and Schedule 2, not
15 just Schedule 1 as the previous table was.

16 THE COMMISSIONER: Under your medical aid
17 cost, does the rehabilitation centre come under that?

18 MR. MacDONALD: It comes under the medical
19 aid cost.

20 THE COMMISSIONER: The rehabilitation
21 centre at Downsview?

22 MR. MacDONALD: Yes.

23 MR. ESTEY: That is in Table 4?

24 MR. MacDONALD: Yes, as part of payment
25 to hospitals.

26 MR. ESTEY: Does it include payments to
27 company facilities?

28 MR. MacDONALD: If the company has a
29 medical department which renders medical aid to its
30 workmen, the payment would be made to that doctor and,



1 in fact, in some cases, would get into the company
2 accounting, I would think.

3 MR. ESTEY: Are the hospital payments
4 made directly to the hospital or to the Hospital
5 Services Commission?

6 MR. MacDONALD: Direct to the hospital.
7 We are involved in making adjustments ~~as~~ other agencies
8 are to the various hospitals, as the ~~Ontario H~~ospital
9 Services Commission revises their rates.

10 THE COMMISSIONER: In other words, the
11 Hospital Services has nothing to do with you, nor you
12 with them, but the hospitals charge you the same rate
13 as they charge the Ontario Hospital Association?

14 MR. MacDONALD: Yes, in our case they
15 recover from us ~~at the adjusted~~ rate for the previous
16 year.

17 THE COMMISSIONER: According to what
18 the Ontario Hospital Association ---

19 MR. MacDONALD: According to what the
20 actual cost of their operation has been established at,
21 hospital by hospital.

22 MR. ESTEY: That explanation sounded very
23 good, but what in the world does that mean -- "adjusted
24 rate for the previous year?"

25 MR. MacDONALD: The Hospital Services
26 Commission allow the various hospitals under their
27 jurisdiction to charge a rate which has been determined
28 in consultation with the Hospital Services Commission,
29 and it is subject to an annual review and adjustment.
30 My point is that, to the best of their ability, they



1 estimate what their costs will be; they establish a
2 rate, and they charge us that rate and at the end of
3 the period, when the actual costs are known, they
4 adjust it to an actual cost.

5 MR. ESTEY: And that is the rate you pay?

6 MR. MacDONALD: That is the rate we
7 eventually pay.

8 MR. ESTEY: Capital cost allowance and
9 everything goes *into* the pot and out comes the rate
10 and you pay it?

11 MR. MacDONALD: That is right.

12 THE COMMISSIONER: Will you go on now to
13 Table 5?

14 MR. MacDONALD: Table 5 represents the
15 calculation of what the change in the definition of
16 "Accident" did to a number of cases that became allow-
17 able and what the cost of those claims actually was
18 for industry in the province.

19 THE COMMISSIONER: How are you able to
20 arrive at that?

21 MR. MacDONALD: The way in which we did
22 that, sir, was to ask the Claims Department to review
23 all of the cases in the sprain and strain category to
24 determine which ones were allowable only by reason of
25 the change in the definition of "Accident". Those
26 which would have been allowed on the previous criteria
27 established by the Board were eliminated.

28 THE COMMISSIONER: They reviewed the
29 claims of all compensation cases within that period?

30 MR. MacDONALD: It was not all cases, sir.



1 It was a sample large enough from a statistical and
2 medical point of view to give us the answer we felt
3 was necessary. The cases were reviewed by senior
4 Claims Officers.

5 THE COMMISSIONER: Over what period?

6 MR. MacDONALD: We provided them with a
7 sample of cases and asked them to look over all the
8 cases. We have done this in the last two weeks.

9 THE COMMISSIONER: This is the period
10 from the time when this change came in 1965?

11 MR. MacDONALD: We selected a sample of
12 strains and sprains that we felt was large enough to
13 give us a statistically significant answer.

14 THE COMMISSIONER: Do strains and sprains
15 include backs?

16 MR. MacDONALD: Yes. We do not limit
17 this just to backs, because strains and sprains
18 affecting other parts of the body are definitely in
19 this category as well.

20 MR. ESTEY: How much of the 1.1 is
21 attributable to a change of the word "Gratuitous"
22 to "Chance"?

23 MR. MacDONALD: I think actually that is
24 in the former definition and what we are saying here
25 is that, taking the new definition of "Accident" and
26 taking the given accidents we were investigating, the
27 Claims Officer was asked to say would it have been
28 allowed prior to this change in definition or would it
29 not have?

30 MR. ESTEY: You are only directing your



1 mind to the change in definition by adding the words
2 "Disabled arising out of".

3 MR. MacDONALD: Yes. There has been no
4 other change.

5 MR. ESTEY: Well, they changed the word
6 "Gratuitous" to "Chance", didn't they. But I take it
7 your interpretation is that that made no change?

8 MR. MacDONALD: It made no difference as
9 far as the Claims Department is concerned.

10 THE COMMISSIONER: Then you estimated the
11 annual compensation cost and, does that include
12 capitalized values?

13 MR. MacDONALD: This includes the whole
14 range of accidents from temporary disability to
15 permanent disability and, in some cases, death too,
16 I would think.

17 The actual increase in the percent of
18 compensation cases that became allowable was 1.1
19 percent which have an annual estimated cost of
20 \$488,000.

21 Doctor Wood advises me that this is about
22 900 cases a year additionally.

23 THE COMMISSIONER: The annual compensation
24 cost for claims allowed by reason of new definition is
25 \$488,000., and that was 1.1 percent, but your total
26 compensation costs for 1965 was \$76,000,000. So,
27 1.1 percent would hardly be \$488,000, would it?

28 MR. MacDONALD: The point is, we do not
29 feel that out of the change in definition of
30 "Accident" and the change in waiting period have any



1 significant affect as far as the total increase has
2 been. It has been the cost of new accidents occurring
3 in the period and, coupled with the wage spiral which
4 affects the wage thesis on which the accidents are
5 calculated, that has really been the reason for this
6 increase in cost.

7 THE COMMISSIONER: I just want to make a
8 note of what you say, Mr. MacDonald, on that basis.
9 It is not your opinion --

10 MR. MacDONALD: But the change in
11 definition of "Accident" and the change in the waiting
12 period from 5 to 3 days has significantly affected
13 costs. It represents -- If you wish, sir, I could
14 move over and deal with each of the other two industries
15 regarding the changes since the advent of the new
16 definition of "accident".

17 THE COMMISSIONER: Go ahead with Table 6.

18 MR. MacDONALD: Table 6 gives you the
19 statement of the increase in compensation claims
20 allowed when the waiting period was changed from 5 to
21 3 days and gives you the cost of compensation for
22 those dates. I think we should look at this figure.
23 which is rather minimum, but we are only talking about
24 the payment of one and two days of compensation, so
25 there was a 7.4 percent increase in the number of
26 cases in our total workload which became compensable
27 and they had an annual cost of \$147,000. Prior to
28 this amendment being made, the estimated cost might
29 be slightly in excess of \$200,000. but, in fact, it
30 was not.



1 THE COMMISSIONER: And then, is there some
2 compensable saving in administration costs or anything,
3 or is there anything involved there?

4 MR. MacDONALD: I believe there was a
5 reference made in one of the briefs to administration
6 and, at this point, if you wish, sir, I could read my
7 comment about that.

8 MR. COMMISSIONER: I will leave it to Mr.
9 Estey when he brings it up, but we are going to hear on
10 this point at any event what the effect of a further
11 reduction would be or what the situation is so far as
12 this reduction went.

13 MR. MacDONALD: In the tables on benefit
14 changes, sir, we have a table indicating what it would
15 cost to make such changes.

16 THE COMMISSIONER: I think \$147,000. is
17 not very much.

18 MR. MacDONALD: You asked earlier what
19 the effect had been of the retroactive benefit changes
20 which were being amortized over a ten year period.
21 They are affecting assessments annually about 2-1/2
22 percent.

23 THE COMMISSIONER: Your increase for those
24 benefit changes that are in existence now --

25 MR. MacDONALD: They are increasing
26 assessments 2-1/2 percent annually for the next ten
27 years.

28 MR. ESTEY: What was that figure - 2-1/2
29 percent?

30 MR. MacDONALD: 2-1/2 percent.



1 MR. ESTEY: What was the 2 percent one you
2 had - that was the cost of living increase?

3 MR. MacDONALD: That is the assumption on
4 which they made their calculations in British Columbia,
5 Mr. Estey.

6 Table 7 gives a breakdown of the actual
7 effect in the case of the motor vehicle manufacturers
8 of the three points they were making as having a serious
9 effect on their accident costs. The annual cost in
10 their case for ten years of the three changes in
11 pensions was \$18,000. per year for ten years. This
12 represents, if you look back at the table on capitalized
13 values, \$18,000. out of \$322,000. that was put aside
14 for pensions in the year 1965.

15 MR. ESTEY: Was that Table 2?

16 MR. MacDONALD: Table 2, sir, yes.

17 In their case, the waiting period had
18 9.8 percent more of their cases compensable and
19 represents an annual cost of \$3,800. That is \$3,800.
20 out of \$861,000. for compensation.

21 The change in the definition of accident
22 made 2.1 percent of their cases eligible for compensation
23 rather than the industry average of 1.1, and represented
24 an annual cost of \$32,600. again out of the \$861,000.
25 for compensation.

26 THE COMMISSIONER: The industry average was
27 what?

28 MR. MacDONALD: 1.1.

29 THE COMMISSIONER: Then, from this, you
30 deduct the waiting period and the additional costs



1 for the change of the definition of accident in relation
2 to the total amount of compensation of \$861,000. is
3 minimal.

4 MR. MacDONALD: Right.

5 THE COMMISSIONER: It would account for
6 \$35,000. over \$861,000., whatever percentage that would
7 be.

8 MR. MacDONALD: I believe, sir, the
9 \$32,600. would also, in some cases, represent pension
10 awards, so it would be having some effect on the
11 capitalized value as well, so it would have some bearing
12 on the next column. We have not made any attempt to
13 break it down as between total temporary disability
14 and permanent disability.

15 In the case of the mining of nickel, the
16 percentage increase in the number of cases allowable
17 by reason of the change in the definition of "Accident"
18 is a 3.0 percent increase which represents an annual
19 cost of \$38,500.

20 MR. ESTEY: What about the other two items
21 for nickel?

22 MR. MacDONALD: We didn't calculate that.
23 I don't think anywhere in their brief did they make
24 an issue of a waiting period having any particular
25 affect on their cost situation.

26 THE COMMISSIONER: Now, I think perhaps
27 we could do it after lunch, but I still have not sorted
28 out this picture with relation to the motor vehicle
29 manufacturers, what accounts for this phenomenal
30 increase in their costs. We can get that after lunch,



1 perhaps you can explain it.

2 MR. MacDONALD: I think, sir, no doubt
3 it is as a result of the very large expansion that took
4 place in their industry during that period. The pay-
5 rolls went up very drastically and they went into
6 full production as you well know, and it is a direct
7 result of that increase.

8 THE COMMISSIONER: In other words, there
9 would be more people up around the \$6,000. level than
10 there would be around the \$4,000. level, say, and more
11 people employed - those two things would affect it?

12 MR. MacDONALD: Yes, and in their case
13 I believe their average compensation basis is around
14 \$105.00, whereas the average one is \$56.00.

15 MR. ESTEY: What are those two figures?

16 MR. MacDONALD: The exact figures are
17 \$105.49 and the average for all Schedule 1, \$81.41.

18 THE COMMISSIONER: What are you giving us
19 now?

20 MR. MacDONALD: This is the wage basis
21 for the compensation awards we made. It is \$81.41
22 average wage in all the Schedule 1 for compensation
23 awards and the similar figure for the motor vehicle
24 group is \$105.49.

25 MR. ESTEY: What year is that, Mr. MacDonald?

26 MR. MacDONALD: 1964.

27 THE COMMISSIONER: And when you say for
28 compensation awards, these are the average earnings on
29 which compensation awards are based, is that it?

30 MR. MacDONALD: They were the earnings on



1 which we based awards during that year, sir.

2 THE COMMISSIONER: It is after one o'clock,
3 so perhaps we can leave the last table until we resume
4 at two.

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6 ---At 1:00 P.M., the Hearing adjourned until
7 2:00 P.M.
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1 ---At 2:00 P.M., the Hearing recommenced.

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3 MR. ESTEY: We got as far as Table 7 and
4 8, I think.

5 MR. MacDONALD: Yes.

6 Mr. Commissioner, if I may, I would like
7 to correct an answer I gave just before lunch relating
8 to the average earnings in Schedule 1 and for the motor
9 vehicle industry. The average for Schedule 1 was
10 \$85.00 and for the motor vehicle industry, \$115.50.

11 THE COMMISSIONER: The average for Schedule
12 1 was how much - \$85.00?

13 MR. MacDONALD: \$85.00, and for the motor
14 vehicle industry \$115.50.

15 THE COMMISSIONER: That is in the year --

16 MR. MacDONALD: 1964, sir.

17 THE COMMISSIONER: Then, if you found it
18 necessary to give us that, what about 1965 and 1966?

19 MR. MacDONALD: 1965 figures have not
20 been tabulated as part of our statistical work yet.
21 It is presently being done.

22 THE COMMISSIONER: Aren't there any figures
23 from the Department of Labour which show what the
24 average -- oh, this is your Schedule 1, yes. There
25 will be figures from the Department of Labour. Well,
26 I believe we have some here. Now, these are the people
27 who come under your survey. The Department of Labour
28 will have statistics too about average earnings, will
29 they not?

30 MR. MacDONALD: D.B.S. actually have more



1 figures in their computations on average wages in
2 individual industries.

3 THE COMMISSIONER: Are they easy to find
4 or should we ask you to produce them for us?

5 MR. MacDONALD: We can obtain figures
6 for you if you require them, sir.

7 Table 9 indicates the actual earnings for
8 total disability awards during the three month period
9 in 1965. Annual earnings were under \$1,000. in 87
10 claims which is .4 percent of the total, between
11 \$1,000. and \$2,000., 555 claims, 2.4 percent of the
12 total, between \$2,000. and \$3,000., 2,876 claims,
13 20.8 percent of the total, between \$4,000. and \$5,000.,
14 in 6,069 claims, 26.1 percent of the total, between
15 \$5,000. and \$6,000., 4,567 claims, 19.7 percent of the
16 total. Between \$6,000. and \$7,000., 2,279 claims,
17 9.8 percent of the total, between \$7,000. and \$8,000.
18 1,135 claims, 4.9 percent of the total, between \$8,000.
19 and \$9,000., in 441 claims, 1.9 percent of the total,
20 between \$9,000. and \$10,000., 201 claims, .9 percent
21 of the total, over \$10,000. in 174 claims, .7 percent
22 of the total.

23 THE COMMISSIONER: These would be, roughly,
24 then, those under the minimums prescribed which would
25 be a little over 2 percent of the earning people under
26 the minimums and over the maximum of \$6,000., --, roughly,
27 18 percent?

28 MR. MacDONALD: 18 percent in the year
29 1965.

30 THE COMMISSIONER: In the year 1965, yes.



1 MR. MacDONALD: A similar survey in 1966
2 showed that 25.2 percent of our claims were above the
3 \$6,000. maximum.

4 THE COMMISSIONER: Do the Department of
5 Labour have any statistics of this kind broken down in
6 any way?

7 MR. MacDONALD: Not to my knowledge.

8 THE COMMISSIONER: They just have an
9 average, I suppose?

10 MR. MacDONALD: It is averaged in certain
11 instances and on a different basis than ours.

12 The next set of tables deals with the
13 question of the various proposed benefit increases.
14 Table 1 shows the cost of increasing maximum earnings
15 basis to \$7,000. Table 2 shows the cost of increasing
16 lump sum awards in death cases to \$500.00 and Table
17 2A to \$1,000.000. Table 3 shows the cost of increasing
18 burial allowance.

19 THE COMMISSIONER: Perhaps you need not
20 go through them all on the index, but just deal with
21 them as you come to them.

22 MR. MacDONALD: Table 1, the cost of
23 increasing maximum earning basis to \$7,000., gives
24 us an annual additional cost of \$,800,000.00., which
25 would represent a 2.2 percent increase in assessments.
26 We could calculate that \$1,800,000. in various other
27 levels if you would like us to do so.

28 THE COMMISSIONER: Table 2?

29 MR. MacDONALD: Table 2 shows the cost
30 of increasing lump sum awards in death cases to



\$500.00 would cost \$45,000. annually, which is a .1 percent increase in assessments. Table 2A, increasing the lump sum award to \$1,000. for death cases would have an estimated annual cost of \$158,000., a .2 percent increase in assessments.

Table 3, the cost of increasing burial allowance to \$500.00, would be \$65,000. annually, which is a .1 percent increase in assessment costs. Burial allowance to \$700.00 would cost \$130,000., which is a .2 percent increase in assessments. Increase in burial allowance to \$900.00 would cost \$195,000., which is a .2 percent increase in assessments.

Increase in widows' pensions to \$100.00 per month, on the assumption that existing pensions will be retroactively increased, the capitalized cost of that change would be \$15,203,000, which would have a ten year amortized cost of \$1,820,000. for ten years, which would be a 2.2 percent increase in assessment for each of those ten years. There would, of course, be the additional cost over the present basis for new widows in death cases which occurred after the amendment. This is estimated to cost \$885,000. additionally, annually, which would be an additional 1.1 percent increase in assessments.

The cost of increasing widows' pensions to \$125.00 per month retroactively, the capitalized cost of \$30,405,000., a ten year amortized cost of \$3,641,000., an annual increase in assessments of 4.4 percent; and for new pensions, after the date of the amendment, an additional \$1,770,000. annually,



1 which is a 2.2 percent increase.

2 THE COMMISSIONER: Have you given us the
3 capitalized cost of the first of those items in each
4 of those tables, but not in the second?

5 MR. MacDONALD: This is, in fact, the
6 capitalized cost of doing it in the second case because
7 they are capitalized currently.

8 THE COMMISSIONER: You capitalized the
9 ones that are there now and that you anticipate during
10 the coming year?

11 MR. MacDONALD: The first figure there is
12 the full capitalized cost for existing pensions. On
13 the assumption this would have to be amortized, we
14 have given you a figure for ten years. For pensions
15 which occurred after the date of amendment, they would
16 have to be capitalized in full as of the date that
17 the pension is awarded. The \$1,770,000. does represent
18 the capitalized sum. That is, for the pensions which
19 did occur in that period. There would be pensions
20 for each year thereafter which would be fully capital-
21 ized.

22 THE COMMISSIONER: Well, existing widows'
23 pensions, why doesn't that cover everything up to now
24 if the change is to be made?

25 MR. MacDONALD: The first figure of
26 \$30,405,000. will cover the cost of all future payments
27 for existing widows.

28 THE COMMISSIONER: Will the additional
29 cost -- don't you capitalize that?

30 MR. MacDONALD: Yes, but we are saying



1 that already we would be committed under the present
2 amendment to capitalize pensions at \$75.00 a month,
3 whereas the new award is \$125.00 per month. The
4 additional amount to provide for that \$50.00 a month
5 fully capitalized at the time of the award is
6 \$1,770,000.

7 THE COMMISSIONER: I don't follow it.
8 Leaving off this matter of increasing existing pensions,
9 what is the estimate of the capitalized cost, based
10 on your experience over the years of pensions for the
11 coming year?

12 MR. MacDONALD: Just as dependancy pensions?

13 THE COMMISSIONER: Is this the capitalized
14 cost you have given me, \$885,000. in the first one
15 and \$1,770,000. in the second?

16 MR. MacDONALD: Yes, it is.

17 THE COMMISSIONER: You can only give
18 that year by year?

19 MR. MacDONALD: Yes.

20 THE COMMISSIONER: That is the whole
21 amount?

22 MR. MacDONALD: The cost of increasing
23 children's pensions to \$60.00 per month, for existing
24 children's pensions, the capitalized cost would be
25 \$4,011,000. and the ten year amortized cost \$480,000.
26 a year, a .6 percent increase in assessments, and
27 the additional capitalized cost for providing for
28 children after the date of the amendment at the
29 higher rate, \$780,000., a .9 percent increase in
30 assessments.



1 Increase in children's pensions to \$75.00
2 per month, capitalized cost of \$7,064,000., a ten
3 year amortized cost of \$846,000., which represents a
4 1 percent increase in assessments, and the additional
5 capitalized cost for new children's pensions per
6 annum, \$1,365,000., a 1.7 percent increase in assess-
7 ments.

8 Increase in orphans' pensions to \$75.00
9 per month, you have a capitalized cost of \$154,000.,
10 the ten year amortized cost of \$18,000. and an
11 additional cost annually of \$18,000., both average
12 have minimal effects on assessments.

13 There are two suggestions made about the
14 basing of dependancy awards. on the average earnings
15 of the deceased husband. We were asked to estimate
16 the cost of doing that on 60 percent of the average
17 earnings of the deceased husband and this has an
18 estimated annual additional cost of \$7,674,000.,
19 which represents a 9.3 percent increase in assessments.
20 We have made no attempt to apply that particular
21 suggestion retroactively, in view of the fact it would
22 be an astronomical sum.

23 THE COMMISSIONER: You refer to the
24 average earnings of the deceased husband: that is,
25 his total earnings.

26 MR. MacDONALD: Yes. Yesterday, it was
27 made clear that the one representation which suggested
28 100 percent of average earnings actually meant that
29 they want it on a 75 percent basis, so we corrected
30 our table and we are presenting here a table indicating



1 the cost of increasing combined widows' and children's
2 pensions to 75 percent of the average earnings of the
3 deceased husband. Thus, we have an estimated annual
4 additional cost of \$10,659,000., which represents a
5 13 percent increase in assessments.

6 Referring to the waiting period, we have
7 two suggestions relating to the reduction of the wait-
8 ing period to one day. In one case, the representation
9 is made that it should be done in that manner with no
10 payment for the day of accident. In the second case,
11 that there should be payment for the day of accident.
12 I would like to emphasize before I refer to this table
13 that in the present situation with the present waiting
14 period, the day of accident is paid for if there is
15 any wage loss in all of the cases which do involve
16 compensation. So, if there were to be no payment for
17 the day of accident, it would actually remove compensa-
18 tion payments which are presently being made, so our
19 first statement here is that the estimated reduced
20 annual cost by not paying for the day of accident on
21 the present three day waiting period, or any waiting
22 period, would be \$477,000. That represents a saving.
23 Payment for the days to the 1 and 2 day accidents
24 would cost an additional \$212,000., which means that
25 the estimated annual saving, if you had a one day
26 waiting period with no payment for the day of accident,
27 is \$265,000., which would reduce assessments by .3
28 percent.

29 Now, if you reinstate a claimant for the
30 day of accident and reduce the waiting period to one



1 day, the additional cost in total would be \$794,000.,
2 which is a 1 percent increase in assessments.

3 THE COMMISSIONER: I don't suppose an
4 accident ever occurs that the man doesn't get paid for
5 the day of accident?

6 MR. MacDONALD: I think we should point
7 out that many union agreements call for payment
8 independently of compensation, so that we are not, in
9 effect, saying that industry would save the \$477,000.,
10 but certainly, compensation to that extent would not
11 be paid by the Board. In many of these situations,
12 the ---

13 THE COMMISSIONER: In effect, industry
14 is paying twice for that day?

15 MR. MacDONALD: No. What happens, sir,
16 is that if they have paid him for that day, the com-
17 pensation award is paid by us to the employer.

18 THE COMMISSIONER: Oh, I see. I am glad
19 we have got that clear because I did not understand
20 that. If the employer pays for the first day and the
21 Compensation Board is prepared to pay for it, that
22 amount is paid to the employer so he does not pay for
23 it twice. Then, if the employer does not pay it and
24 the Compensation Board has paid it, where is the saving?

25 MR. MacDONALD: We are saying, sir, that
26 if there was no payment ---

27 THE COMMISSIONER: If you did not pay
28 the employer ---

29 MR. ESTEY: Or the workman?

30 MR. MacDONALD: Or the workman.



1 MR. ESTEY: That is, the \$477,000. would
2 would be saved if you didn't pay anybody for that day?

3 MR. MacDONALD: Correct.

4 THE COMMISSIONER: Well, it doesn't seem
5 to me to make much difference one way or the other,
6 does it? The employer is going to pay for that day's
7 work anyway whether he has to pay it to the Compensation
8 Board or whether he has to pay it to the man.

9 MR. MacDONALD: In many situations. There
10 are many industries, many employers where this isn't
11 the case.

12 THE COMMISSIONER: Then, the second one
13 is just to operate on the basis on which you operate
14 now?

15 MR. MacDONALD: And to reduce the waiting
16 period to one day.

17 THE COMMISSIONER: Is there any advantage
18 from your standpoint in reducing it to one day?

19 MR. MacDONALD: I don't think there is
20 any advantage, sir. I think we are there to administrate
21 whatever legislation we are given.

22 THE COMMISSIONER: You make an enquiry
23 anyway, don't you?

24 MR. MacDONALD: There would be additional
25 enquiry necessary, I think, to determine the actual
26 loss in these ~~less~~ than three day accidents so that
27 there would be, I think, additional enquiry. There
28 would have to be the establishment of the earning
29 basis as well.

30 THE COMMISSIONER: You don't make enquiry



1 now on accidents that are less than three days?

2 MR. MacDONALD: Not concerning earnings,
3 sir. We have to determine that the accident did
4 happen, we have to have medical evidence that it did
5 take place.

6 THE COMMISSIONER: That is something that
7 has been bothering me. On an accident of less than
8 three days a report comes in anyhow and there is
9 probably a report from your doctor too, if there is
10 medical attention?

11 MR. MacDONALD: Yes.

12 THE COMMISSIONER: In all those cases,
13 do you get a report from the employer and the man
14 whether he is claiming compensation or not?

15 MR. KERR: Mr. MacDonald has asked me
16 to answer that question, sir. In our medical aid
17 claims only involving now payment of compensation, we
18 obtain a report from the employer which gives us the
19 circumstances of the accident and, in the majority of
20 cases, this is all we need to adjudicate that particular
21 claim since there is no lost time. In doubtful cases
22 or cases of strain, we may require additional informa-
23 tion from the workman and a diagnosis from the doctor,
24 but in the large bulk of these medical aid only claims,
25 we just require a report from the employer and if
26 everything is in order that is all we require at that
27 time, sir.

28 THE COMMISSIONER: You don't require a
29 report from the doctor?

30 MR. KERR: No, sir, we establish the



1 accident on the basis of the employer's report in the
2 greater percentage of those small medical aid only
3 claims. If there is anything on the report that
4 indicates that we should make further enquiries, such
5 as a delay in reporting or a condition that is not
6 obvious as a result of the accident reported, then we
7 must make enquiry, but the number of enquiries on these
8 medical aid only claims is minimal because of the nature
9 and type of claim.

10 We do have to establish that the employer's
11 business was under the Act, we have to establish that
12 the accident arose out of and during the course of
13 employment and, in disablement, we must establish a
14 causal relationship as we discussed the other day.
15 These factors are similar to the medical aid only
16 claims as they are to the compensation claims, but
17 invariably, in these medical aid only claims, it is
18 much more clear-cut and not as much enquiry is needed-
19 we usually have the doctor's account on file with
20 his diagnosis.

21 THE COMMISSIONER: I am sure that, from
22 your standpoint, it is not desirable to spend a lot
23 of time on claims that are very small and that you
24 never hear any more about. The concern that has been
25 expressed here is that at a later time somebody comes
26 along and says, "Well, I am entitled to more compensa-
27 tion. This is when it arose and this is where it
28 stemmed from". Do you have many of those?

29 MR. KERR: I can tell you that approximately
30 5 percent of our medical aid claims are reopened for



1 consideration and when a medical aid claim is reopened,
2 it is completely re-assessed. If he is off work at
3 a later date, we have to establish why he was off
4 work and his condition at that time was a result of
5 the accident reported. So, at that stage, we must
6 obtain all the reports that we require in a compensa-
7 tion claim and, in effect, we re-adjudicate that claim
8 to make sure his present condition is a result of the
9 accident reported.

10 THE COMMISSIONER: Thank you.

11 MR. MacDONALD: The final table indicates
12 the additional cost if the compensation basis was
13 increased to 80 percent of earnings. The estimated
14 additional cost of that would be an additional
15 \$5,000,000. annually, which would have a 6.1 percent
16 increase on assessment.

17 THE COMMISSIONER: The one you gave us
18 on 75 percent of earnings, did you not apply a ceiling
19 on that? I thought you gave us a 75 percent, maybe
20 you didn't.

21 MR. MacDONALD: The 75 percent calculation,
22 sir, was done for widows. Is this the one you are
23 referring to?

24 THE COMMISSIONER: Just for widows?

25 MR. MacDONALD: Just for widows. And,
26 of course, we gave you the effect of increasing the
27 ceiling from \$6,000. to \$7,000. at a 75 percent basis.

28 Mr. Commissioner, this represents the
29 benefit increase changes which have been suggested and
30 if there are further questions relating to it, we would



1 be happy to answer them.

2 MR. ESTEY: Are you going on to something
3 else?

4 MR. MacDONALD: No, I am stopped now.

5 MR. ESTEY: You have confused us as much
6 as you are going to? I would like to show you how
7 little of this has rubbed off by asking right at the
8 outset with reference to your first page, not your
9 tables, but just your first page, in the second
10 paragraph you say that the "original estimate made
11 by authorities in B.C. when their plan introduced this
12 feature was that the cost of future benefits would be
13 \$20,000,000." and that is linking the benefits to the
14 cost of living, assuming some such index exists, is
15 that right?

16 MR. MacDONALD: Yes, sir.

17 MR. ESTEY: And that index is said to
18 involve an annual increase in cost of 2 percent per
19 annum. So that the assumed base of the cost of living is
20 plus 2 percent each year.

21 MR. MacDONALD: What I am trying to do
22 there, Mr. Estey, is to point out that if, in fact,
23 the cost of living index changes by something other
24 than 2 percent, the whole calculation is invalid.

25 MR. ESTEY: And that is right. Then,
26 what is the \$20,000,000? Is that the actual cost of
27 pay-outs if you went through this procedure for payment,
28 or is that the fund you would have to invest to produce
29 the increased benefits?

30 MR. MacDONALD: What I was trying to do



1 here was to indicate why we had not really attempted
2 to make calculations on a cost of living basis was
3 to point out the experience of the one other juris-
4 diction that had this problem. Their original estimate
5 was \$20,000,000. and, within a year, they had to change
6 it to \$47,000,000.

7 MR. ESTEY: What is the \$20,000,000?

8 MR. MacDONALD: It is an incorrect calcula-
9 tion of the liability.

10 MR. ESTEY: Apart from that though, if
11 it were correct, what is it?

12 MR. MacDONALD: That was the original
13 estimate that somebody made of what doing this type of
14 thing would cost.

15 MR. ESTEY: That is what I want to know,
16 what it would cost. Does that mean that would be the
17 actual pay-out, or is that the amount of money you
18 would invest to produce the pay-out?

19 MR. MacDONALD: The amount of money you
20 would invest to produce the pay-out.

21 MR. ESTEY: At what rate of interest?

22 MR. MacDONALD: I am not familiar with
23 what interest rate they might have used.

24 MR. ESTEY: I made a note that you said
25 that this was a capitalizing cost and that term you
26 have used in a number of your tables. When you
27 capitalize a cost in your working papers, what rate
28 do you use for capitalization?

29 MR. MacDONALD: At the present time, our
30 capitalization rate is 4-1/4 percent.



1 MR. ESTEY: And is that used because that
2 is somewhat near or on the conservative side of the
3 earning power of the Workmen's Compensation fund?

4 MR. MacDONALD: Yes, it is an interest
5 rate recommended to us by our consulting actuary,
6 taking those matters into account.

7 MR. ESTEY: I understand that now. All
8 that you are seeking to say is that if you didn't
9 know how to calculate this cost of swinging over to a
10 compensation based on cost of living and rolling it
11 forward all the time without subsequent statutory
12 reviews, then you would have a figure on this page 1,
13 but since B.C. has demonstrated the difficulties, you
14 have not got such a figure?

15 MR. MacDONALD: This is correct.

16 MR. ESTEY: But it would be quite high?

17 MR. MacDONALD: Yes, it would be in excess
18 of \$200,000,000.

19 THE COMMISSIONER: I go back again to
20 where we were before. This \$47,000,000. is to
21 capitalize current, as well as pensions that have
22 accrued from the past?

23 MR. MacDONALD: No, in their case there
24 will be an adjustment annually for their new pensions.
25 This is the original pensions they were dealing with
26 at that time. They have a note in their annual report,
27 I believe, to the effect that there will be an annual
28 adjustment in this amount, having regard for the new
29 pensions which are developing.

30 THE COMMISSIONER: An annual adjustment



1 for what amount?

2 MR. MacDONALD: There will be an annual
3 amount additionally to the \$7,740,000.

4 THE COMMISSIONER: I understood Judge
5 Tysoe to say that he was not recommending this partic-
6 ular thing and you say it was actually put into effect?

7 MR. MacDONALD: Sir, I would not want to
8 say that I am an expert on exactly what they have done.
9 I do know --

10 THE COMMISSIONER: It must have been if
11 it cost them \$47,000,000. instead of \$20,000,000.

12 MR. MacDONALD: I don't know the history,
13 but it may well have been, but the original estimate
14 was not an actuarial estimate: it might have been
15 someone else's estimate.

16 THE COMMISSIONER: What I am saying is
17 unless it was to apply to all pensions that they
18 are paying, old ones as well as new, they would not
19 have an estimate and a result. As I say, if my memory
20 serves me, Mr. Justice Tysoe didn't recommend that it
21 apply to all pensions. He said that that was a matter
22 for them.

23 MR. MacDONALD: I think that is correct.

24 THE COMMISSIONER: Maybe the consolidated
25 revenue fund contributed?

26 MR. MacDONALD: Well, in their case,
27 50 percent of this cost is being contributed by the
28 consolidated revenue fund and 50 percent by the
29 employers.

30 THE COMMISSIONER: Oh, it is?



1 MR. MacDONALD: Yes.

2 MR. ESTEY: Now, I am going to leave this
3 in just a minute, but I want to get one more thing
4 straight. If this British Columbia figure represents
5 the funding of the old pensions, the existing pensions,
6 then wouldn't there be a diminution figure each year,
7 a factor by which they go down as people die off?

8 MR. MacDONALD: That would have been part
9 of the calculation.

10 MR. ESTEY: And the net result of all that
11 adding and subtracting would be a first estimate of
12 \$20,000,000.

13 MR. MacDONALD: The present value they
14 say now is \$47,000,000.

15 MR. ESTEY: I am not saying that now, I
16 am staying with the forecast. If their forecast turned
17 out to be right, let us assume that and use the
18 \$20,000,000., it is an easier figure, if they put
19 \$20,000,000. into a fund to produce this amount of
20 money to finance compensation funds linked to the cost
21 of living index, then some time in the future the fund
22 would be released from any further burden because all
23 the old pensioners would be dead, isn't that right?

24 MR. MacDONALD: Theoretically, yes.

25 MR. ESTEY: Not theoretically, they are
26 all going to die. That is what happens to all of us,
27 isn't it?

28 MR. MacDONALD: Assuming there has been
29 no introduction of the application of the principle
30 to continuing pensions or new pensions.



1 MR. ESTEY: I thought you told the
2 Commissioner that the new pensions was a separate
3 figure altogether.

4 MR. MacDONALD: Yes, this is correct.

5 MR. ESTEY: Then the \$20,000,000. some
6 day will come back free of any encumbrance for pensions,
7 won't it?

8 THE COMMISSIONER: The new pensions will
9 take care of the difference.

10 MR. MacDONALD: Actually, it will have
11 been paid out in pensions.

12 MR. ESTEY: I thought it was the capital=
13 ized cost?

14 MR. MacDONALD: But it is put into a fund
15 and from that fund the payments are made each year.

16 MR. ESTEY: Oh, both the capitals and
17 earnings?

18 MR. MacDONALD: Right.

19 MR. ESTEY: So, if everyone lives as long
20 as the actuary said they should live, it will go to
21 zero.

22 MR. MacDONALD: The capital will be
23 expended plus the interest.

24 MR. ESTEY: The same as a capitalized
25 insurance policy?

26 MR. MacDONALD: Yes.

27 MR. ESTEY: Then, let us move on to
28 something else. Under the supplementary benefits.
29 First of all, you mentioned the Canada Pension Plan
30 involved disability benefits and that has been in



1 effect now for how long - a year?

2 MR. MacDONALD: Just about that.

3 MR. ESTEY: What benefits, generally, does
4 that plan pay on disability?

5 MR. MacDONALD: Mr. Estey, I am not an
6 expert on the Canada Pension Plan, and I would not
7 like to give you detailed explanations about it. If
8 you wished, we could develop those figures for you.

9 MR. ESTEY: Perhaps we will ask you later
10 if we want it, but I just wondered if you had any
11 preliminary studies at the time that plan was evolved
12 with as much public discussion as it entailed and
13 whether the Board made any kind of a calculation where
14 the impact of the disability features of the Canada
15 Pension Plan landed vis a vis the disability con-
16 tributions of The Workmen's Compensation Board?

17 MR. MacDONALD: The point is, we were not
18 even aware this was happening. This particular plan
19 was developed without any consultation with any
20 Workmen's Compensation authorities, and does provide
21 for similar benefits, but we had no opportunity and,
22 actually, the experience today, of course, is so
23 limited that we can't really predict what the impact
24 will be.

25 MR. ESTEY: But since the plan has been
26 in effect, what you are saying is that the Board has
27 made no study of it as regards disability benefits?

28 MR. MacDONALD: Well, actually, in its
29 present form, with the size of the benefits, it is not
30 a significant factor yet. I think it will likely



1 become so as the Canada Pension Plan is modified and
2 the pension awards increase in the future.

#12 3 MR. ESTEY: I see. Perhaps we can find
AS 4 out from others what those benefits are. You say
5 they are not very large?

6 MR. MacDONALD: They are rather small
7 at the moment, yes.

8 THE COMMISSIONER: You mean small in the
9 amount that is paid to the individual, or simply
10 because there have been very few claims?

11 MR. MacDONALD: They are small as a dollar
12 amount. The Canada Pension Plan itself provides for a
13 small pension, not a large pension. This is a fraction
14 of their pension.

15 MR. ESTEY: So, a person being injured
16 and being a member of that plan, you say, will receive
17 a relatively small disability payment?

18 MR. MacDONALD: At the moment, yes.

19 MR. ESTEY: Then you mentioned, that in
20 addition to the state administered plan, there are,
21 of course, private disability plans and, I take it,
22 there is no prohibition in the present Workmen's
23 Compensation Act against an employer and an employee
24 entering into these disability payment plans.

25 MR. MacDONALD: Normally, what happens is,
26 that the employee purchases this type of plan himself.
27 The employer is not a party to it.

28 MR. ESTEY: Could he be?

29 MR. MacDONALD: I suppose he could be
30 in theory, but I never heard of a situation like that.



1 MR. ESTEY: You haven't gone into a
2 collective agreement or some other provision requiring
3 that?

4 MR. MacDONALD: Not as a supplement to
5 Workmen's Compensation, no.

6 MR. ESTEY: I ask you the question but
7 that was another submission by a company which said,
8 in effect, that it is an odd thing that the Workmen's
9 Compensation Act does not prohibit a workman from
10 insuring himself against injury, when in parallel
11 situations the Hospital Services Act for Ontario
12 prohibits the sale of insurance covering that which
13 the statute itself covers. I think you are aware of
14 that?

15 MR. MacDONALD: Yes, I think this is
16 really because we were the first authority in the
17 field. The other people came along afterwards, and
18 they put these things into their legislation.

19 MR. ESTEY: Do you know of any Workmen's
20 Compensation statute / in Canada that has such a
21 prohibition?

22 MR. MacDONALD: No, I am not aware of
23 one.

24 MR. ESTEY: Does the Board have any
25 view as to whether such a prohibition would be a good
26 or a bad policy?

27 MR. MacDONALD: I can't give you a
28 Board statement of policy on that point.

29 MR. ESTEY: There has been no study made
30 on that?



1 MR. MacDONALD: I can say that, periodically,
2 employers in particular situations will complain about
3 this, but we have not yet encountered it as a major
4 problem or difficulty.

5 MR. ESTEY: I take it from what you say
6 that this right or this practice has not reared its
7 head as an impediment to honest performance under the
8 Act by people covered by the Act?

9 MR. MacDONALD: Not as a large factor.
10 In individual cases, it has been a factor.

11 MR. ESTEY: Obviously, it would be a
12 temptation to either ~~foreign~~ injury or to extend injury
13 if you were going to make a profit out of it.

14 MR. MacDONALD: This is correct.

15 MR. ESTEY: You mentioned the Federal
16 Canada Pension Plan: Do you know of any other
17 Federal legislation which has disability payments
18 attached to it?

19 MR. MacDONALD: Not to provide a
20 supplemental benefit. There are Federal Acts which
21 provide workmen's compensation benefits to their
22 employees.

23 MR. ESTEY: That does not interfere with
24 your Schedule 2, I take it?

25 MR. MacDONALD: No, their Act is the
26 basis for it in many cases.

27 MR. ESTEY: I take it, there is no
28 situation under which your Board has to take into
29 account any payments being received for disability
30 from the Federal Government?



1 MR. MacDONALD: No, not that I am aware
2 of.

3 MR. ESTEY: Turning to your tables, your
4 historical tables first, the first page after the
5 index, immediately ahead of Table No. 1, uses two
6 terms which I would like to understand at the outset.
7 The first one is at the top of the page, it talks
8 about the amending act of 1948 and says the full
9 capitalized value of this increase was charged directly
10 to the employers concerned. Does that mean, again,
11 that the term "capitalized" is used in the sense of
12 creating a fund which, coupled with its earnings, would
13 be taken to zero by the demands of this amendment?

14 MR. MacDONALD: That is right.

15 MR. ESTEY: Again, you use the then
16 current actuarial interest rate.

17 MR. MacDONALD: Yes.

18 MR. ESTEY: That might fluctuate slightly
19 from year to year, I take it?

20 MR. MacDONALD: That would be, as I recall
21 it, around 3-3/4 percent at that time.

22 MR. ESTEY: In the next paragraph, the
23 last sentence dealing with the 1960 amendments, you
24 say, "At December 31, 1962 the remaining outstanding
25 costs were amortized over a ten year period. The
26 ten year amortized cost of this amendment amounted
27 to \$667,000." Now, what does that mean, Mr. MacDonald,
28 in terms of amortized over a ten year period?

29 MR. MacDONALD: If you move to the table
30 on the next page ---



1 THE COMMISSIONER: That is the annual
2 assessment of interest?

3 MR. MacDONALD: Yes, we are, in fact,
4 going to charge to employers and transfer to our pension
5 fund an amount of \$667,000., \$639.00 at the beginning
6 of each of the ten years, commencing January 1st, 1963.

7 MR. ESTEY: If you do that, that fund,
8 coupled with interest, will pay the costs added to
9 the statute by that year's amendment.

10 MR. MacDONALD: By that amendment and
11 the complete duration of the amendments that have to
12 be made.

13 MR. ESTEY: Then, before leaving that
14 page, the amendments of 1965 -- your summary, I take
15 it, is simply a clear statement of what section 43
16 actually provides?

17 MR. MacDONALD: We thought it would be
18 useful to have you know exactly where the payment
19 would fall if the earnings were as stated.

20 MR. ESTEY: Again, you find the ten year
21 amortized cost of \$1,028,000. Does that mean you
22 have to put it in the fund at the opening of the ten
23 year period?

24 MR. MacDONALD: At each year of the ten
25 year period, yes.

26 MR. ESTEY: That should have "Per annum"
27 after it, should it?

28 MR. MacDONALD: Every one of these
29 amortized statements are per annum.

30 MR. ESTEY: Turning to your first table,



1 in your second column from the right, again, I take it
2 it would be clear to have annual cost over the top
3 of that expression "Ten year amortized cost" -- it
4 is the annual cost?

5 MR. MacDONALD: It is the annual cost
6 for ten years, yes.

7 MR. ESTEY: I don't know that it has any
8 bearing on our problem, but what does the last column
9 mean, "Present Value of Outstanding Amortized Cost
10 at Dec. 31/65". Why is that quantity of any importance?

11 MR. MacDONALD: It is a matter of informa-
12 tion, that if for any reason these costs had to be
13 immediately capitalized, this is what the outstanding
14 capitalized cost is.

15 THE COMMISSIONER: That represents eight
16 years at \$667,000. a year.

17 MR. MacDONALD: It is the present value
18 of eight years at that rate -- the present value of
19 those eight future payments that would have to be
20 paid.

21 MR. ESTEY: What do you need to know
22 that for? I may be missing something here: what
23 does that add?

24 MR. MacDONALD: It may well be, from
25 your point of view, it is not helpful. We thought
26 it might have some significance. There is certainly
27 no intent that it should be capitalized from the
28 Board's point of view.

29 MR. ESTEY: No, that seems obvious.
30 Then, Table No. 2: this table, I hope, will shed



1 some light on the problem, because it seems to go to
2 the root of this thing. We have heard, and you have
3 heard that a great number of claims have come to
4 light in the last three or four years which have
5 driven accident costs up, either on a company basis
6 or an industry basis or on a Schedule 1 basis, but
7 when I turn to see what this all amounts to in Table
8 No. 2, I see that it really only gives the overall
9 increase; for example, ~~i~~n Schedule 1, I take it, under
10 the heading "Compensation" says that \$20,000,000. were
11 paid out in 1960 and \$33,000,000. in 1955 to compensate
12 people on a temporary basis.

13 MR. MacDONALD: That is right.

14 MR. ESTEY: On a non-permanent, non-
15 medical basis. The next column is the pay-out for
16 the permanent awards.

17 MR. MacDONALD: And for dependancy awards.

18 MR. ESTEY: All right, let us call them
19 all permanent to make it easier. Now, does that
20 figure of \$14,000,000. represent all that was actually
21 paid out that year under those circumstances?

22 MR. MacDONALD: That was the amount that
23 was put into the pension fund in that year to provide
24 for future payments.

25 MR. ESTEY: Set aside for that?

26 MR. MacDONALD: Yes.

27 MR. ESTEY: And made unavailable for
28 anything else and, therefore, shown as though it were
29 paid out?

30 MR. MacDONALD: It was transferred, in



1 effect, from the current account to the pension fund
2 and was put into that fund irrevocably for future
3 pensions.

4 MR. ESTEY: And from the point of view of
5 the employer, that money is as much gone as the
6 \$20,000,000.?

7 MR. MacDONALD: Yes.

8 MR. ESTEY: And you move over to the
9 third column and you have Medical Aid, which costs
10 \$13,000,000. in that year: so that money is gone
11 from the fund. Therefore, the fund is poorer at the
12 end of the year by \$48,000,000. -- for 1965, it has
13 gone down by the amount of \$76,000,000.

14 MR. MacDONALD: That is right.

15 MR. ESTEY: What is the explanation --
16 it, no doubt, is not simple -- but, what contributes
17 to the explanation of that dramatic increase in
18 total distributions from the fund?

19 MR. MacDONALD: First of all, we have
20 established that it is not the change in definition
21 of "Accident", not the change in the waiting period
22 which has made a significant contribution.

23 MR. ESTEY: I just want to tabulate
24 these: It is not traceable to the change of the
25 waiting period or the change in the definition of
26 "Accident"?

27 MR. MacDONALD: That is right.

28 MR. ESTEY: Then, what is it attributable
29 to?

30 MR. MacDONALD: It is attributable to



1 the change in the wage basis for the people who are
2 injured.

3 MR. ESTEY: That is the wage rate?

4 MR. MacDONALD: The wage rate, and to
5 the volume of business that is being done in the
6 industries.

7 MR. ESTEY: Does that mean the number of
8 people employed in the industry?

9 MR. MacDONALD: The number of people
10 employed and the payroll, and either one would
11 demonstrate a barometer of what is taking place.

12 MR. ESTEY: I take it the third factor
13 is an increase, probably a sharp increase in the cost
14 of medical aid?

15 MR. MacDONALD: There has been an increase
16 in the cost of medical aid, yes.

17 MR. ESTEY: Now, I have got those three
18 factors driving it up and two not having much effect.
19 Is that the spectrum of the factors you wish us to
20 look at?

21 MR. MacDONALD: Yes.

22 MR. ESTEY: That is it?

23 MR. MacDONALD: That is it.

24 MR. ESTEY: Do you have any figures
25 showing how many more people were in Schedule 1 in
26 1965 than in 1960?

27 MR. MacDONALD: We don't have them here,
28 sir, but I could get them for you.

29 MR. ESTEY: It would seem to me that in
30 order to really comprehend the significance of Table



1 2, that you would have to know that, wouldn't you?

2 MR. MacDONALD: It might help to know the
3 payroll figures.

4 MR. ESTEY: Well, let us move to that
5 one. What are the gross figures for the two years,
6 1960 and 1965, of the payroll contributing to Schedule
7 1?

8 MR. MacDONALD: While they are tabulating
9 that, I have done it for the two rate numbers that we
10 were talking about, the nickel group and the motor
11 vehicle group. The payroll for the motor vehicle
12 group in 1960 was \$144,000,000., and, in 1965, it had
13 risen to \$348,000,000.

14 THE COMMISSIONER: \$144,000,000.?

15 MR. MacDONALD: Yes, to \$348,000,000.,
16 which represents 140.5 percent increase.

17 MR. ESTEY: 140.5?

18 MR. MacDONALD: Yes.

19 MR. ESTEY: And that, of course, would
20 have a very sharp effect on the first two columns,
21 Compensation and Capitalized Values?

22 MR. MacDONALD: Yes.

23 MR. ESTEY: And that is for industry
24 306, is it?

25 MR. MacDONALD: Yes, that is right.

26 MR. ESTEY: Now, do you have the number
27 of claims filed in each of those two years for Rate
28 No. 306?

29 MR. MacDONALD: In the earlier years,
30 Mr. Estey, we were not keeping statistics by rate



1 number, they were kept by class and group. I can give
2 you the figures for 1964 and a preliminary 1965 figure.

3 THE COMMISSIONER: Now, what is the
4 figure you are about to give us?

5 MR. MacDONALD: This is the number of
6 compensable accidents in 1964 in Rate No. 306.

7 MR. ESTEY: In what year?

8 MR. MacDONALD: 1964.

9 MR. ESTEY: You have not got it for 1965
10 so we could match it off with that payroll figure,
11 have you?

12 MR. MacDONALD: Actually, I don't have
13 it for all of 1965.

14 MR. ESTEY: Wasn't it 1965 you gave us a
15 384,000,000. for?

16 MR. MacDONALD: Yes. The number of
17 accidents, as a matter of comparison --

18 THE COMMISSIONER: Another one you had
19 given me before, there was a payroll figure of
20 \$267,000,000. shown for 1964. Would that be approx-
21 imately right?

22 MR. MacDONALD: The actual figure for
23 1964 - I think the figures that are there, sir, are
24 just for the number of motor vehicle manufacturers
25 association. For the whole industry, which includes
26 the manufacturers of trucks and others who were not
27 a member of that particular trade association, the
28 payroll figure in 1964 was \$281,600,000.

29 THE COMMISSIONER: Well, the figures I
30 am looking at are the other, but that is the figure



1 you wanted anyway - \$281,000,000.

2 MR. MacDONALD: \$281,600,000.

3 MR. ESTEY: Let us get out of these claims
4 now.

5 THE COMMISSIONER: I have not got these
6 figures. The number of comparable accidents in 1964
7 was what?

8 MR. MacDONALD: 1,140. We have not
9 finally tabulated the total for Rate No. 306 figures
10 for the year 1965 yet. We did, yesterday, get a count
11 of the accidents of the four large motor companies who
12 made representations to you yesterday morning, and
13 they, themselves, had a total of 1,213 accidents in
14 the four companies in 1965. I will be able to get
15 for you the total figures for the industry very
16 shortly.

17 MR. ESTEY: Can you give us the 1960
18 figures on accidents?

19 MR. MacDONALD: That would be very
20 difficult to get.

21 MR. ESTEY: That is because you didn't
22 keep it by rates but by class?

23 MR. MacDONALD: Kept it by class and
24 group and the group in which the motor vehicle people
25 were included, also included aircraft manufacturers
26 and others.

27 MR. ESTEY: I want to be sure of one
28 other thing. Are those claims filed, or claims com-
29 pensated?

30 MR. MacDONALD: Those were claims



1 compensated. Compensation must have been paid for
2 them to have been counted.

3 MR. ESTEY: Do you have the claims filed,
4 not necessarily compensated?

5 MR. MacDONALD: We are not keeping any
6 statistics on the basis of filings of incidents by
7 industry. We are keeping the total.

8 MR. ESTEY: The number of rejections, you
9 don't have them?

10 MR. MacDONALD: Not by industry.

11 THE COMMISSIONER: Certainly, the number
12 of compensable accidents increased very little from
13 1964 to 1965 and the amount of compensation went from
14 \$171, to \$328. - about 150 percent at that year and
15 the capitalized values went from \$102. to \$377. - up
16 300 percent that year.

17 MR. MacDONALD: Yes.

18 THE COMMISSIONER: There was, according
19 to this, very little increase in compensable accidents
20 if the four big companies represent generally the
21 industry.

22 MR. MacDONALD: I would suspect that
23 there has been a fairly sizeable increase in the
24 number of accidents if we had all companies counted.

25 THE COMMISSIONER: If you had them all,
26 do you think there would be a sizeable increase?

27 MR. MacDONALD: I think so, yes.

28 MR. ESTEY: Can you give us the total
29 payrolls for Schedule 1 for the years 1960 and 1965,
30 or have I got that?



1 MR. MacDONALD: Mr. Greaves has gone out
2 to the phone, he is getting it for us.

3 MR. ESTEY: Then, in order to parallel
4 this inquiry, could we have the total Schedule 1
5 claims paid in 1960, 1964 and 1965?

6 MR. MacDONALD: The total number of claims
7 in 1960 was 240,469. That includes medical aid, I
8 must emphasize.

9 THE COMMISSIONER: How many?

10 MR. MacDONALD: 240,469.

11 THE COMMISSIONER: And that was in what
12 year?

13 MR. MacDONALD: In the year 1960. In
14 the year 1964, which is the last year tabulated, the
15 figure was 293,126.

16 MR. ESTEY: And you say for 1965, you
17 do not have those figures?

18 MR. MacDONALD: This particular report
19 is currently being tabulated, sir.

20 MR. ESTEY: Will we have them?

21 MR. MacDONALD: Before the Commission
22 Inquiry is finished, yes, sir.

23 MR. ESTEY: Can you segregate between
24 claims paid and those which relate only to medical
25 aid?

26 MR. MacDONALD: Yes.

27 MR. ESTEY: Have you got that figure?

28 MR. MacDONALD: Medical aid only in
29 1960 was 156,361, and in 1964 it was 184,947.

30 THE COMMISSIONER: When you gave us



1 the total claims paid, that included the medical aid,
2 did it?

3 MR. MacDONALD: Pardon me, I am giving
4 you Schedule 1 only there. I should give you the
5 total including Schedule 2.

6 MR. ESTEY: You will lose me forever if
7 you do that. We are at table 2, Schedule 1. Let us
8 stay with Schedule 1.

9 MR. MacDONALD: If the question is
10 Schedule 1 only, then the first figure I gave you in
11 total should be correct. It should become 216,685 in
12 1960.

13 MR. ESTEY: What is this for, claims paid
14 including medical aid?

15 MR. MacDONALD: Claims paid, including
16 medical aid, of which --

17 THE COMMISSIONER: Give me the number
18 again.

19 MR. MacDONALD: 216,685, of which
20 156,361 were medical aid only. A similar figure in
21 1964, total claims 262,372, of which medical aid was
22 184,947.

23 MR. ESTEY: I take^{it} you don't have those
24 figures for 1965?

25 MR. MacDONALD: Not yet.

26 THE COMMISSIONER: The first figures you
27 gave us were for both Schedules 1 and 2?

28 MR. MacDONALD: Yes.

29 MR. ESTEY: And the Schedule 1 payroll,
30 he has not come back with it yet?



1 MR. MacDONALD: No.

2 MR. ESTEY: Looking only for the moment --
3 perhaps he has those now.

4 MR. MacDONALD: Schedule 1 payroll in
5 1960 was \$5,182,830,000.

6 THE COMMISSIONER: Just a moment, Schedule
7 1 payroll --

8 MR. MacDONALD: \$5,181 830,000.

9 MR. ESTEY: Are we agreed that that is
10 the same as \$5,182,000.?

11 MR. MacDONALD: If you put three zeros
12 on the end, you are all right.

13 THE COMMISSIONER: And that was in what
14 year?

15 MR. MacDONALD: That was in 1960. Do
16 you want the years in the interval, or just 1965?

17 MR. ESTEY: We had better have 1964.

18 MR. MacDONALD: 1964 was \$6,613,409,000.
19 In 1965, \$7,634,204,000.

20 MR. ESTEY: That payroll has gone up
21 about 40 percent?

22 MR. MacDONALD: Yes.

23 MR. ESTEY: Nearly 50 percent. Which
24 would account for the fact, I take it, that the motor
25 vehicles are about three times out of line on the pay-
26 roll with the general increase in Schedule 1?

27 MR. MacDONALD: That is the point I
28 am making this morning. Their wage basis is quite a
29 bit higher than the average.

30 MR. ESTEY: The thing that bothers me is



1 that their pay-out has increased by six times. What
2 is the explanation for the discrepancy?

3 MR. MacDONALD: Well the greatest
4 significant change has been in capitalized values and
5 these are the costs of permanent disability and
6 dependancy awards for current claims not arising out
7 of the change in definition of "Accident" or the
8 change in the waiting period.

9 MR. ESTEY: The thing I don't understand,
10 perhaps ~~others~~ do, is you say this traumatic increase
11 is not attributable to the change of definition or
12 change in waiting period, but is attributable to
13 increase in wages, increase in numbers of people in
14 the industry covered by the Act.

15 MR. MacDONALD: And some more permanent
16 disability awards which took place in 1965.

17 THE COMMISSIONER: That was the last
18 thing you were emphasizing. The other things are
19 inconsequential, and yet there is this enormous
20 percentage increase out of line with the Schedule 1
21 payroll increase, or not accounted for by the payroll
22 increase in the industry itself. So you say that
23 the difference is due to the capitalized cost of
24 permanent awards in that industry?

25 MR. MacDONALD: They have three factors
26 bearing more extensively on them than the rest of
27 Schedule 1 - their wage basis has gone up more than
28 the average for Schedule 1 during the interval.

29 MR. ESTEY: We have this.

30 MR. MacDONALD: Their medical aid costs



1 have gone up more than Schedule 1 during the interval
2 and, finally, there has been a higher incidence of
3 high cost permanent disability claims.

4 MR. ESTEY: But that is not attributable
5 to the change of definition, that latter factor?

6 THE COMMISSIONER: What is that last one?

7 MR. MacDONALD: Higher incidence of
8 permanent high cost disability claims.

9 MR. ESTEY: Now, what does that mean?

10 MR. MacDONALD: They are having more
11 permanent disabilities which are costly in themselves.

12 MR. ESTEY: And why is that in their
13 industry?

14 MR. MacDONALD: I can't answer that
15 question.

16 MR. ESTEY: Do you have any range of the
17 type of industry?

18 MR. MacDONALD: Yes.

19 MR. ESTEY: A big question a lot of
20 people wanted to know is, is the back a big factor
21 in the figures you have in front of you?

22 MR. MacDONALD: No, the back is a very
23 minimal factor. The most costly claims in this group
24 have to do with eye injuries.

25 THE COMMISSIONER: Have to do with eye
26 injury?

27 MR. MacDONALD: Yes. There are a couple
28 of expensive fatal claims which took place in the
29 industry, there is a costly claim involving an
30 amputation and one involving a combination fracture of



1 the lower end of the tibia, another involving a crushed
2 hand.

3 MR. ESTEY: All this was in 1965?

4 MR. MacDONALD: This is all in 1965.

5 MR. ESTEY: From 1964 to 1965, the increase
6 in capitalized value for permanent disabilities has
7 gone up \$200,000.?

8 MR. MacDONALD: That is right.

9 MR. ESTEY: So, if you trace back behind
10 that, the years fluctuate more or less and are certainly
11 much closer than the fluctuations in all the other years
12 as a whole. That one year seems to stand out.

13 THE COMMISSIONER: What would you capitalize
14 when you say a man was 30 years of age and there was a
15 fatal accident roughly on an earnings in the General
16 Motors plant, an ordinary workman. Just give me some
17 rough estimate of what it might be capitalized at.

18 MR. MacDONALD: I have two fatal claims
19 here. I could give you their actual cost.

20 THE COMMISSIONER: How old were the men?

21 MR. MacDONALD: I don't know that, sir.
22 One cost \$13,310.00, and the other cost \$12,163.00.

23 THE COMMISSIONER: This increase here is
24 \$200,000.

25 MR. ESTEY: You would have to have a
26 hundred of those.

27 THE COMMISSIONER: That is what Mr. Estey,
28 I think, is trying to get at and trying to find out
29 where this is.

30 MR. MacDONALD: Well, in this listing I



1 have here, there are perhaps 40 or 50 claims and the
2 greatest single cost I see here is \$17,850.00, which
3 is a pension award in the case of an eye. The
4 capitalized value for the crushed right hand, which
5 was a 33 percent award, had a capitalized value of
6 \$27,622.50.

7 THE COMMISSIONER: So, with the number you
8 have, it would not take long -- of course, this is an
9 increase of \$200,000., but there was \$136,000. there
10 before, it went up to \$322,000.00. Does this list
11 bring it up to that?

12 MR. MacDONALD: The list I have here brings
13 it up by that amount.

14 MR. ESTEY: You mentioned a couple of
15 ~~deaths~~.

16 MR. MacDONALD: Yes.

17 MR. ESTEY: The capitalized value of those
18 would be fairly high, wouldn't they?

19 MR. MacDONALD: \$14,000. and \$12,000.,
20 respectively.

21 MR. ESTEY: This raises perhaps a question
22 which is not relevant today but which must have a
23 relevancy before we are through. These figures for
24 1964 and 1965 in Rate 306 would indicate quite a
25 number of things, two of which, I take it, is one,
26 the need for safety measures, and secondly, an adjust-
27 ment to the rate payable by people in that industry,
28 and I take it both those things have been looked into?

29 MR. MacDONALD: The assessment rate was
30 increased rather drastically last year.



1 MR. ESTEY: Any appeals on that?

2 MR. MacDONALD: No.

3 THE COMMISSIONER: Any complaints?

4 MR. MacDONALD: Grumblings, but not
5 complaints.

6 MR. ESTEY: What rate do they pay?

7 MR. MacDONALD: It is still a relatively
8 low rate: 55¢ per \$100.00 of payroll. Their rate
9 has been as low as 40¢.

10 THE COMMISSIONER: As far as the rate goes,
11 I suppose that is because their payroll is so high?

12 MR. MacDONALD: The average rate for
13 Schedule 1 is around \$1.22.

14 MR. ESTEY: Is that 1.22 percent?

15 MR. MacDONALD: Yes.

16 MR. ESTEY: So they are paying about half
17 the average rate?

18 MR. MacDONALD: Yes. I think, dealing
19 specifically with your point suggesting they have a
20 poor accident record, we are not suggesting that at
21 all. We are just giving you the facts of what has been
22 happening. There is a change and I think it is because
23 of the very high employment rate they have had in that
24 industry.

25 MR. ESTEY: In order to nail that one down,
26 have you got the figures of accidents per thousand
27 employed in the industry?

28 MR. MacDONALD: We can get you a frequency
29 rate per million man hours over the period if you would
30 like to have that.



1 MR. ESTEY: A million man hours -- man
2 hours, I suppose, is a better way to do it because of
3 the wages.

4 MR. MacDONALD: It is the recognized way
5 of determining whether or not there is a worsening of
6 the accident record.

7 MR. ESTEY: Are they available, to give us
8 those rates for this industry on Schedule 1 as a whole
9 for those three years?

10 MR. MacDONALD: We can certainly get 1964.
11 I think we can get 1965, but we will have to look into
12 that.

13 MR. ESTEY: In 1960, you have the same
14 problem, that you did not keep the accidents rate?

15 MR. MacDONALD: No, I think we have
16 calculated that. We have frequency rates by rate
17 number.

18 MR. ESTEY: If we could get those figures
19 and see whether or not this industry is going up or
20 down faster than Schedule 1.

21 THE COMMISSIONER: We will adjourn now
22 for ten minutes.

23 ---Short recess.

24 MR. ESTEY: Turning to Table 3, dealing
25 with Rate 076, I take it that rate includes underground
26 operations of nickel mining concerns.

27 MR. MacDONALD: And includes their operations
28 where they are processing the ore.

29 MR. ESTEY: To define these -- the mine
30



1 the mill and the refinery.

2 MR. MacDONALD: Yes.

3 MR. ESTEY: And this group is the group
4 applicable to International Nickel Company?

5 MR. MacDONALD: And the other nickel
6 companies.

7 MR. ESTEY: We have heard some evidence
8 and a lot of discussion about International Nickel,
9 and this is the group in which your accounting relates
10 to their payments and their employees?

11 MR. MacDONALD: Yes.

12 THE COMMISSIONER: Are nickel companies
13 the only ones in that group?

14 MR. MacDONALD: Nickel companies and their
15 refineries.

16 MR. ESTEY: Would this include all the
17 employees of the nickel companies, whether they are
18 engaged in the refineries or the mine or mill?

19 MR. MacDONALD: Or in the office -- all
20 of their employees.

21 MR. ESTEY: Everybody?

22 MR. MacDONALD: Everybody.

23 MR. ESTEY: Looking at Table No. 3, their
24 percentage increase is less than the average for the
25 six year period under the compensation under the
26 temporary liability section, and except for medical
27 aid they are under the industry all the way along?

28 MR. MacDONALD: That is correct.

29 MR. ESTEY: Then when you take the years
30 1964 and 1965, where we saw a big increase in the



1 motor manufacturers under the capitalized values, you
2 see here, likewise, a rather substantial increase if
3 that is a minus 19 -- is that what that means?

4 MR. MacDONALD: Actually, it means that
5 1963 and 1965 were comparable and 1964 was a better
6 year as far as capitalized awards went.

7 MR. ESTEY: Following the dollars makes it
8 a little clearer, doesn't it?

9 MR. MacDONALD: Yes.

10 MR. ESTEY: So the nickel mining companies
11 under the capitalized values are running along from
12 1960 to 1965 without any **dramatic** increases in the
13 capitalized values?

14 MR. MacDONALD: They are doing better than
15 Schedule 1 generally in that area.

16 THE COMMISSIONER: I suppose one of the
17 things that was given as a basis in accounting for the
18 effect on motor vehicles was that their wage basis
19 was up more than the average in Schedule 1. Would not
20 the same apply to International Nickel?

21 MR. MacDONALD: I have their wage basis
22 for that year: the payroll ---

23 THE COMMISSIONER: Perhaps you can answer
24 my question: Is their wage basis up over the average
25 for the schedule?

26 MR. MacDONALD: No, it is an 11.7 percent
27 increase over 1960 in their case, versus the rate
28 No. 076 where it is up 40 percent.

29 MR. ESTEY: What do those figures mean?
30 Does that mean the payroll is up 11 percent?



1 MR. MacDONALD: 11 percent, yes, sir.

2 MR. ESTEY: That is all from 1960 to 1965?

3 MR. MacDONALD: That is right in the middle.

4 MR. ESTEY: That takes into account both
5 the rate and the physical increase -- the wage rate
6 and the physical increase, the increase to get out on
7 the 11 percent?

8 MR. MacDONALD: That is right.

9 MR. ESTEY: So that the increase from
10 \$423,000. of temporary disability to \$650,000. is not
11 explainable on the basis of wage increases and an increase
12 of employees?

13 MR. MacDONALD: Actually, the increase in
14 capitalized values is 24.7 percent.

15 MR. ESTEY: I am talking about compensation
16 in your first column: you have gone up annually from
17 payouts of \$423,000. to annual payouts of \$650,000.,
18 although your payroll including both the increase in
19 the wage and the increase in numbers of bodies has only
20 gone up 11 percent. What is the explanation for that?

21 MR. MacDONALD: We have made no attempt
22 to analyze their situation. We felt that their increase
23 was in line with the predictable increase that we have
24 been putting into our calculations for all of Schedule 1.
25 We are required annually to predict and rate accordingly,
26 and certainly what has been happening in their case was
27 within predictable limits.

28 MR. ESTEY: Would you look at 1964 under
29 the compensation column for the nickel mining industry
30 where we see a jump of about \$200,000., which is about
42 percent. Can you explain that sharp jump?



1 MR. MacDONALD: There was a rather large
2 increase as between 1964 and 1965 in their payroll.
3 Actually, that payroll in 1964 was one percent less than
4 it was in 1960.

5 MR. ESTEY: The payroll set?

6 MR. MacDONALD: The big payroll increase
7 took place in 1965.

8 MR. ESTEY: So, really, we are left with
9 the question of what accounts for the annual increase of
10 \$225,000. a year in compensation distributions in this
11 industry when their payroll only went up 11 percent.
12 That is the question in this industry, apparently, isn't
13 it?

14 MR. MacDONALD: Well, the difference is
15 not large enough that we feel there is something abnormal
16 about that.

17 MR. ESTEY: This difference would not be
18 affected by the high cost of medical aid?

19 MR. MacDONALD: In their case, medical aid
20 is slightly higher than it was in 1960.

21 MR. ESTEY: That is a different column.
22 It would not be affected by the change in wage rate
23 because that was only 11 percent, even taking into
24 account the 2,000 increase in the employment?

25 MR. MacDONALD: We have made no attempt
26 to analyze here the number of persons employed. We are
27 talking now about total payroll. Perhaps if we looked
28 at the wage bases in these years for the cases which are
29 compensated, this would tell us a better story.

30 MR. ESTEY: And perhaps also the figures



1 you say you are going to give us for the motor manufactur-
2 ers of accidents per million man hours for this industry
3 might explain the thing too?

4 MR. MacDONALD: Yes.

5 MR. ESTEY: Would you get those for us
6 as well?

7 MR. MacDONALD: Yes.

8 MR. ESTEY: That might be all that will
9 be required to answer that question.

10 THE COMMISSIONER: 11.7 percent referred
11 to bodies or payroll?

12 MR. MacDONALD: Payroll, sir.

13 MR. ESTEY: We heard from Mr. Osler and
14 I think it is in your brief, that their payroll
15 individuals went up from 14,000 odd to 16,000 odd in
16 this period of time, so that is about a 12 percent
17 increase, which is pretty close to your figure of 11
18 percent. Am I wrong?

19 MR. OSLER: From 1951 to 1965 we went up.

20 MR. ESTEY: Do you have the figure for
21 1960, by any chance?

22 MR. OSLER: I will get that for you.

23 MR. ESTEY: Oddly enough, as you have
24 pointed out, the capitalized value column does not seem
25 to analyze out in the same way that the compensation
26 column analyzes out, and I suppose that can be explained
27 by the character of the accidents throughout the years.
28 One particular year might be distorted with the number
29 of fatalities, I take it?

30 MR. MacDONALD: There was a type of case



1 being compensated in the earlier years which has now been
2 eliminated from the picture that does explain that.

3 MR. ESTEY: What case is that?

4 MR. MacDONALD: There were certain cases
5 involving cancer which were capitalized in the earlier
6 years.

7 MR. ESTEY: Then, the medical aid you have
8 already dealt with and I take it the same general
9 observations about increased medical cost in Table 2
10 refer to all your tables, medical costs obviously being
11 more expensive in 1965 than in 1960?

12 MR. MacDONALD: This is a cost that is
13 uncontrollable by either the employer or the Board.

14 MR. ESTEY: Again, the medical aid increases
15 in the mining industry look a lot better than they do in
16 the motor manufacturing industry. Is that something
17 to do with their safety programmes, or is there an
18 explanation for that?

19 MR. MacDONALD: I don't think I could give
20 you the full explanation for that without quite a bit of
21 study. We have not made any attempt to study that
22 particular point.

23 MR. ESTEY: I suppose another possibility
24 is that the mines probably employ their own doctors
25 which, in some cases, might be cheaper?

26 MR. MacDONALD: I think this is a factor
27 in the situation, but I think the doctors are employed
28 more in the other industry.

29 MR. ESTEY: Than in mining?

30 MR. MacDONALD: Yes.



1 MR. ESTEY: Then, dealing with medical
2 costs, I think Table 4 breaks it down both as to type
3 of cost and year. There must be some simple explanation,
4 but it escapes me as to why the increase in the lower
5 right-hand corner of 48 percent is not the same figure
6 of 58 percent back on Table 3.

7 MR. MacDONALD: Table 4 includes Schedule 2.

8 MR. ESTEY: Oh, I see.

9 MR. MacDONALD: We do not have a separate
10 tabulation of medical aid broken down in this manner for
11 Schedule 1.

12 MR. ESTEY: Schedule 2 is the one where
13 the medical aid is billed to and paid by the individual
14 employer?

15 MR. MacDONALD: No, the Board pays for
16 medical aid in both cases.

17 MR. ESTEY: And recovers it from the
18 employer?

19 MR. MacDONALD: In the case of Schedule 2,
20 from the employer either by way of a special deposit,.....

21 MR. ESTEY: The money goes through the
22 Board and out, but not into the fund and out and they
23 recover that from the Schedule 2 employer?

24 MR. MacDONALD: ~~The~~ **form** of procedure is
25 identical between the two Schedules. It is just a question
26 of reimbursement on the other side that is different.

27 MR. ESTEY: Then, over on Table 5, we get
28 to this business of changing the definition of "Accident".
29 I think you told me that for the purposes of this Table,
30 that you have taken into account the change which



1 occurred in 1963 and which is in, effect, the introduction
2 of the concept of disablement?

3 MR. MacDONALD: That is correct.

4 MR. ESTEY: Now, your figure 1.1 percent
5 is the percentage of all claims which have been allowed
6 in 1963, etcetera, by reason of the introduction of that
7 expanded definition, is that correct?

8 MR. MacDONALD: This is the increase in
9 the percent of compensation claims that become compensable,
10 not the increase in the percent of total claims that
11 become compensable. Taking the base that we had formerly
12 of compensation claims, 1.1 percent more of that base
13 become compensable.

14 MR. ESTEY: I don't follow that, because
15 the claim which is now compensable but which was not
16 compensable before 1963 would not be in the base, isn't
17 that right?

18 MR. MacDONALD: I agree it would not, but
19 this is the way we express the percentage. If you took
20 it as the percent of total claims, it would be a much
21 smaller percentage.

22 MR. ESTEY: Let me back up and ask you
23 this: Let us talk about 1962. In 1962, I take it
24 that you rejected claims which in 1963 you would accept
25 because the definition changed?

26 MR. MacDONALD: Correct.

27 MR. ESTEY: I take it you have no record
28 of those rejections for 1962?

29 MR. MacDONALD: Well, they are likely there,
30 but we have not tabulated that.



1 MR. ESTEY: You would have to go back and
2 examine them all. It would almost be impossible, wouldn't
3 it, you would have to go back and examine them and see
4 if they are, in fact, compensable under the extended
5 definition?

6 MR. MacDONALD: This is, in fact, what we
7 had to do to make this tabulation.

8 MR. ESTEY: That is what I am coming to.
9 Since you can't with reference to 1962, then you did it
10 with reference to the post 1963. And I take it what
11 you did was, you took all the claims which were
12 allowable in the test period, however you did that.

13 MR. MacDONALD: For the period of a year.

14 MR. ESTEY: You took all the claims allowed
15 then
16 for that period and/or you screened out of that 100 percent
17 the number which were allowed only by reason of the
18 extended definition?

19 MR. MacDONALD: This is correct.

20 MR. ESTEY: That is 1.1 percent of the
21 whole?

22 MR. MacDONALD: Correct.

23 THE COMMISSIONER: I had not understood
24 that you had done as much as that. You took all the
25 compensable claims for a year, did you?

26 MR. MacDONALD: We took a period of a year
27 and we took a sample of claims during that year.

28 THE COMMISSIONER: That is what I understood
29 you to say. You took a sample of the claims during the
30 period?

MR. MacDONALD: Using recognized statistical



1 procedures, we took a random sample of claims in that
2 period. We actually examined some 5,000 claims.

3 MR. ESTEY: 5,000 out of many thousands
4 and thousands of claims and you analyzed those. I take
5 it what you did was you had the memo of 1934 and then
6 you had the memo of 1963 giving the two Board policies
7 on what is a compensable claim?

8 MR. MacDONALD: Yes.

9 MR. ESTEY: Those were the two standards.
10 And you went through each file and you said, "This one
11 would not have made the grade under the 1934 memo and
12 that goes for the 1.1 bin"?

13 MR. MacDONALD: That is left out of the
14 1.1 bin.

15 MR. ESTEY: "This one would not have made
16 the grade under 1934", that goes into the "out" bin?

17 MR. MacDONALD: I am sorry, that goes
18 into the 1.1 percent bin.

19 MR. ESTEY: In effect, what you were
20 doing was sitting there as an Appeals Tribunal saying
21 why the appeal was allowed. I don't think you said it
22 was allowed because it was under the extended definition.

23 MR. MacDONALD: Although it would have
24 been handled by a more senior person in the first place.

25 MR. ESTEY: In any case, that is the basis
26 for your statistics re-adjudication.

27 MR. MacDONALD: Yes.

28 MR. ESTEY: Now, this Table, of course,
29 has a bearing on the problem raised in two of the briefs.
30 One of them was International Nickel which gave some



1 astonishing figures on the number of back claims which
2 were made and allowed after 1963, which showed a very
3 sharp increase in the number of those claims. Do you
4 remember that?

5 MR. MacDONALD: Yes.

6 MR. ESTEY: And according to this, if
7 Inco was a statistically reliable organization in
8 the dictionary sense of "Reliable", then you would
9 expect to find a very small increase in that type of
10 disablement claim. That follows, doesn't it? 1.1 per-
11 cent would be quite insignificant, whereas, in fact,
12 the percentages would round out to something like 200
13 or 300 percent on those back claims?

14 MR. MacDONALD: Using the same approach
15 and with their own claims, we have determined that in
16 their case the percentage increase was 3 percent.

17 MR. ESTEY: That is what I want to know.
18 Did you go back and look at their claims for what
19 period?

20 MR. MacDONALD: For the same period.

21 MR. ESTEY: 1965? And you took all their
22 claims for 1965?

23 MR. MacDONALD: The sample in their case
24 was progressively larger and, therefore, even more
25 statistically allowable.

26 THE COMMISSIONER: It showed 3.3 or
27 something?

28 MR. MacDONALD: 3 percent even, sir.
29 Dr. Wood has informed me that in the case of both
30 306 and rate No. 076 we, in fact, did not take a sample:



1 We took all of the strains and sprains that were tabulated
2 in that industry for the year, so that it was all the
3 cases.

4 THE COMMISSIONER: That is a little more
5 satisfactory, I think, as a basis.

6 MR. ESTEY: You took all the claims allowed
7 in that year and then analyzed those to find out the
8 percentage that would not have been allowed except for
9 the extension of the definition?

10 MR. MacDONALD: That is right.

11 MR. ESTEY: And that was 3 percent?

12 MR. MacDONALD: 3.0 percent.

13 THE COMMISSIONER: You are talking now
14 about the Inco one, what you did with Inco?

15 MR. MacDONALD: I am talking about Rate
16 076, the whole industry including Inco.

17 THE COMMISSIONER: This other table 5 you
18 gave us, it did not refer to the whole industry: That
19 was just the 5,000 claims you took in that?

20 MR. MacDONALD: It was a sample we took
21 of those.

22 MR. ESTEY: So that I take it we should
23 approach the International figures on the basis that
24 they are there giving you the number of back claims
25 away back in 1951, and then the number in 1965, and you
26 are saying that if you analyze them out you would find
27 that those back claims were not made compensable until
28 after 1963, except to the extent of 3 percent?

29 MR. MacDONALD: This is what our survey
30 showed, Mr. Estey, yes. The prior instruction would



1 have allowed a majority of those claims.

2 MR. ESTEY: Then, at the bottom of the same
3 page, Table 6, dealing with the waiting period. This is
4 a historical analysis of the same information as you have
5 in tables 11 and 12 respectively projected. You are
6 looking backwards in Table 6 and forward in Tables 11
7 and 12.

8 MR. MacDONALD: There is a difference in
9 this factor in the cases which fall between five and
10 three days in reduction as there is between three
11 and one, so that they are really not the same, sir.

12 MR. ESTEY: What period of time are we
13 referring to in Table 6?

14 MR. MacDONALD: This is the whole of the
15 year 1964.

16 MR. ESTEY: 1964? And in that year 1964,
17 more claims were allowed when you drop from five to
18 three than before?

19 MR. MacDONALD: Similar to the 1.1 percent
20 it is adding to the base of compensation claims. This
21 is the increase attributable to the five to three day
22 change on the base of the cases that have been there the
23 previous year. So, it is an increase relating to comp
24 cases only: It is not a percent of the total cases
25 which became compensable.

26 THE COMMISSIONER: This change was made
27 in 1964, wasn't it?

28 MR. MacDONALD: Made in 1963, sir, April,
29 1963.

30 MR. ESTEY: That is a very elusive base



1 when you transfer it to this waiting period. I don't
2 think I follow you yet. 7.4 percent, what does that
3 represent?

4 MR. MacDONALD: Perhaps if we gave it to
5 you as the number of cases it would be more meaningful.

6 MR. ESTEY: All right.

7 MR. MacDONALD: Could we go on while we are
8 getting that figure calculated, Mr. Estey?

9 MR. Estey: Fine. This Table 6 is
10 predicated on an assumed objectivity on the part of
11 the doctor who says, "This man will be able to report
12 back to work four days hence" or "Six days hence" or
13 "Two days hence". They are assuming that he has arrived
14 at that completely objectively and without reference to
15 the fact that the man across the desk from him is his
16 patient. That is the assumption?

17 MR. MacDONALD: That is correct.

18 MR. ESTEY: And we are saying that if
19 that report is objective, then 7.4 percent more claims
20 fall into compensation by reason of the pull back of
21 the waiting period than if the waiting period had
22 stayed at five?

23 MR. MacDONALD: Yes.

24 MR. ESTEY: So, if the doctors were human
25 like some of them are, I take it they would give the
26 man the benefit of the doubt and write in "You will
27 return to work" and if it is four days he thinks
28 "Well, the Act says five" so he says five. Whereas,
29 if the Act says three days, he would have said four in
30 the first place. So, to that extent, the statistics



1 are better than guesses at what the doctor would have
2 said, are they?

3 MR. MacDONALD: This is, in fact, what did
4 happen. This is not a sample: This is the total number
5 of cases having been analyzed and I agree that this
6 factor is in there as far as the medical profession is
7 concerned.

8 MR. ESTEY: That is no derogatory commentary
9 on them: The fact is that if it is a borderline case,
10 naturally he will go in favour of the man who has been
11 hurt and who **is** out of work and is not being paid
12 getting an extra day put into that form 7 that would not
13 be necessary if the period was three, and I suppose that
14 is true all the way down; as you contract the period
15 there will be a tendency to extend claims into the
16 compensable area the closer you get to zero in the
17 waiting period, is that right?

18 MR. MacDONALD: Yes, I think that is
19 likely so.

20 MR. ESTEY: Can you tell me how that 7.4
21 percent was worked out?

22 MR. MacDONALD: Dr. Wood is doing that
23 now. We have two choices: We can take the number of
24 cases which are in this category and we can relate them
25 to the total volume of cases, or we can relate them
26 to compensation cases only. In this statistic, we have
27 related them to compensation cases only.

28 MR. ESTEY: That means that those which
29 were compensated in 1964, 7.4 percent were added
30 because you went from five down to three?



1 MR. MacDONALD: Right, being specific,
2 Mr. Estey, in this calculation. The total compensation
3 cases were 76,693, of which 5,270 were in the three to
4 five day category and on a base of 72,423, 5,270
5 represents 7.4 percent.

6 MR. ESTEY: And to put it, perhaps, an even
7 simpler way, if you had not made the change, it would
8 have saved the employers \$147,000?

9 MR. MacDONALD: Right.

10 MR. ESTEY: Assuming the doctor would not
11 have changed the form?

12 MR. MacDONALD: Assuming that, yes.

13 MR. ESTEY: Now, as to Table 7. This
14 deals with the motor vehicle industry, I think, does
15 it not?

16 MR. MacDONALD: Yes, sir. And these are
17 the same figures that we dealt with a moment ago
18 generally with regard to Schedule -- Oh, I should have
19 asked you, Table 6 is Schedule 1 or Schedule 1 and 2?

20 MR. MacDONALD: Table 6 is a total of
21 Schedule 1 and 2. Schedule 5 and 6 is Schedule 1 and
22 2. I stand corrected. Table 6 is Schedule 1 only.

23 MR. ESTEY: And what about Table 5?

24 MR. MacDONALD: Table 5 is both.

25 MR. ESTEY: Thank you. Then, when we
26 come to the motor vehicle industry, apparently the
27 increase in number of cases is greater here than the
28 average when you pull it back from five to three and
29 I assume that that would be so if you reduced it from
30 three to two to one?



1 MR. MacDONALD: I now have the frequency
2 rates I could quote if this would help at this point.

3 MR. ESTEY: Yes.

4 THE COMMISSIONER: What have you, Mr.
5 MacDonald?

6 MR. MacDONALD: In 1960 --

7 THE COMMISSIONER: What are these figures
8 you are giving?

9 MR. MacDONALD: These are the number of
10 compensable accidents per million man hours.

11 MR. ESTEY: In Schedules 1 and 2?

12 MR. MacDONALD: I am going to be quoting
13 at this moment the frequency rate according to our
14 calculations of the motor vehicle industry and the
15 nickel industry. Schedule 1 is something that we don't
16 normally keep as an individual figure because it is
17 somewhat academic really. What we are comparing the
18 frequency rate with is the industry itself and that is
19 all that is significant. The other figure is not a
20 significant figure.

21 MR. ESTEY: You don't have it?

22 MR. MacDONALD: We are calculating it. In
23 1960, the frequency rate of compensable accidents in
24 the motor vehicle industry was 8.5. It had risen to
25 18.4 in 1965.

26 MR. ESTEY: Yes.

27 MR. MacDONALD: In Rate 076, the
28 frequency rate in 1960 was 37.1. In 1965, it was 34.4.

29 MR. ESTEY: Would that be roughly the
30 ratio of that assessment rate?



1 MR. MacDONALD: In the neighborhood of
2 \$1.75 to \$2.40 to \$2.55.

3 MR. ESTEY: And in 1960 it would be
4 somewhere around \$4.50 to \$1.00?

5 MR. MacDONALD: Yes, there is a fair
6 relationship between the assessment rate and these
7 frequency rates.

8 MR. ESTEY: Are those figures available
9 for 1962 and 1963?

10 MR. MacDONALD: Yes. In the motor vehicle
11 group in 1962, their frequency rate was 11.1. In 1963,
12 it was 12.6. In 1964, it was 16.4. In the nickel group
13 in 1962, it was 27.9. In 1963, it was 28.4 and in 1964,
14 it was 33.7.

15 MR. ESTEY: I don't suppose in that
16 computer you have down there, that you have a figure of
17 back injuries per million man hours that some day we
18 could have. There is a lot of talk about these back
19 injuries.

20 MR. MacDONALD: I think we could develop
21 one, but I don't see how meaningful it would be.

22 MR. ESTEY: There is quite a discussion on
23 back injuries about them remaining more or less constant,
24 the inference being that something has gone wrong, not
25 with the spines of humanity but with the way the claims
26 are going through and I thought you might have some
27 figures on that.

28 MR. MacDONALD: I think we could get you
29 figures giving you the number of cases which are backs
30 and which would then be expressed as a percent of



1 compensation cases. It has really been fairly stable.

2 MR. ESTEY: It has been fairly constant?

3 MR. MacDONALD: In the rage of 15 to 20
4 percent of the total cases.

5 MR. ESTEY: Moving on here to get into
6 the forecasts which are, perhaps, more useful to us,
7 Table 7 deals with the motor vehicle manufacturers on
8 their actual cost of increase in the retroactive pensions
9 and that is by reason of the amendment in 1960 ---

10 MR. MACDONALD: By reason of all three
11 amendments.

12 MR. ESTEY: But in the first line, retro-
13 active pension increases: What amendment does that
14 relate to?

15 MR. MacDONALD: That is the three
16 amendment changes ---

17 MR. ESTEY: Yes, I see.

18 MR. MacDONALD: 1960, 1963 and 1965?

19 MR. ESTEY: And that is the cost in 1965
20 of the three added together?

21 MR. MacDONALD: Yes.

22 MR. ESTEY: Moving down to the next line,
23 it is the estimated annual cost of the change in the
24 waiting period from five to three days. That is
25 computed as a result of going over either some or all
26 of the claims and ascertaining which were affected by
27 that change and then reducing it to a percentage?

28 MR. MacDONALD: These are all the claims
29 here for 1964 and we looked at every case to be sure
30 that the payment of compensation of less than three



1 days was only payable by reason of the amendment. There
2 are some cases where you might pay less than three days
3 which really have involved a waiting period of five
4 days because of the operation of the weekend. So, we
5 actually looked at every case.

6 THE COMMISSIONER: In this Table 7, in
7 talking about the year 1964, you ~~statethe~~ estimated
8 annual cost of the change in the waiting period. I
9 suppose that is from your research, but you cannot assure
10 us of its accuracy, can you? The same with the estimated
11 annual additional cost ~~due to~~ change of definition of
12 "Accident"?

13 MR. MacDONALD: In this particular situation
14 we could identify all the cases. We were not able to
15 get every claim so that we could get the actual costs
16 in the situation. In some cases, we had to make
17 estimates, so to be completely accurate, we would have
18 to say there is a partial estimate in here. The time
19 factor we had in order to make these calculations has
20 been the reason for that situation.

21 MR. ESTEY: In Table 7, the annual cost
22 of your estimate of the five to three change affects
23 9.8 percent of all the cases in this rate group?

24 MR. MacDONALD: Again, we are talking about
25 9.8 percent of the compensation cases.

26 MR. ESTEY: That ~~were~~ recognized?

27 MR. MacDONALD: Yes.

28 MR. ESTEY: So, ~~that~~ about 10 percent of
29 all the cases paid out in that year in that rate group
30 were so only because of that change?



MR. MacDONALD: Yes.

MR. ESTEY: I take it, to forecast what the effect would be of a further reduction, you would have to know how many claims were coming in -- how many reported accidents were coming in where the disability was for two days or one day?

MR. MacDONALD: Yes.

MR. ESTEY: In fact, you get that kind of a report?

MR. MacDONALD: No. In this case, we have to make an estimate. We have been involved in doing this twice before when the waiting period has been changed.

MR. ESTEY: And this is an experience factor that you use to guess at what the change will be if a further disturbance to that waiting period is carried out?

MR. MacDONALD: Yes.

MR. ESTEY: And, that is, you cannot do that statistically?

MR. MacDONALD: No.

MR. ESTEY: Again, this 2.1 percent attributable to the change of the definition of the word "accident" is based upon a re-examination of the strain and sprain files to see which ones would not have made the grade under the 1934 memo?

MR. MacDONALD: Yes, and in this case, all the files.

MR. ESTEY: In this industry, all the files were examined?



1 MR. MacDONALD: Yes.

2 MR. ESTEY: Then, Table 8 is the same
3 thing as regards the accident definition for the mining
4 industry, and did you do all the files in that one?

5 MR. MacDONALD: All the files involving
6 sprains and strains, yes.

7 MR. ESTEY: And only 3 percent of those
8 files, those which were compensated, were compensated,
9 in fact, because of the change in definition?

10 MR. MacDONALD: Yes.

11 MR. ESTEY: That would include, then, the
12 back cases which were discussed specifically in the
13 International Nickel brief?

14 MR. MacDONALD: It does, yes. That,
15 again, is 3 percent of compensation cases. Not 3 per-
16 cent of sprains and strains.

17 MR. ESTEY: In the year 1964?

18 MR. MacDONALD: Yes.

19 MR. ESTEY: So, if there is an explana-
20 tion for this increase in the number of back claims
21 being compensated, we do not find it in a simple
22 definition extension?

23 MR. MacDONALD: I think there are
24 statistics missing for years like 1961, 1962, 1963 and
25 1964 which are not in the presentation.

26 MR. ESTEY: What do you mean by that?

27 MR. MacDONALD: As far as the representa-
28 tions made by Mr. Osler on behalf of the International
29 Nickel Company, and I don't think they really talked
30 about those years just before. I think there would



1 have to be an examination of those years to tell us
2 the whole story.

3 MR. ESTEY: They go from 41 claims to
4 576 claims for back injuries in sixteen years. In
5 Table 9, the base of this table is not clear to me at
6 the moment. This is actual earnings for temporary
7 total disability awards --- it is total disability.

8 THE COMMISSIONER: There is minimum and
9 maximum?

10 MR. ESTEY: This has no reference to
11 temporary partial disabilities or temporary total
12 disabilities?

13 MR. MacDONALD: Yes.

14 MR. ESTEY: I take it from this table
15 that the effect of -- if one were to raise the ceiling
16 from 6,000 to 10,000 in 1965, that 18.2 percent of
17 the claims for that year would be affected?

18 MR. MacDONALD: About that, that is
19 right.

20 MR. ESTEY: If you had no ceiling at all
21 you would get that figure?

22 MR. MacDONALD: Yes.

23 MR. ESTEY: Whereas, in 1966, 25.2
24 percent of all claims would be affected if they had
25 no ceiling?

26 MR. MacDONALD: The survey was taken in
27 the Claims Department for a two week **period and for all**
28 the claims set up and that was the result of that
29 survey. This earlier survey is a three month period.

30 MR. ESTEY: This would indicate, I take



1 it, statistically, that the wage spiral has carried up
2 to the point where 7 percent more exceeds 6,000 in
3 1966 than in 1965?

4 MR. MacDONALD: Yes, sir.

5 MR. ESTEY: Then, looking ahead in your
6 tables 1 to 13 on the effective increase in certain
7 parts of the Act as suggested by some briefs, and I
8 take it these tables are all in response to one or
9 more of these suggestions which we have examined.

10 MR. MacDONALD: From the briefs that we
11 have seen, these are all the suggestions that have been
12 made and we have put a dollar cost on each one of the
13 suggestions. We have available combinations and
14 permutations of these things and the accumulative
15 effect if you would like to have it.

16 THE COMMISSIONER: You mean if all of
17 the suggestions you have here were accepted?

18 MR. MacDONALD: We thought it would be
19 what
20 useful if you knew/the increased assessment would
21 create if you took the various possible combinations
22 that could be put in a package.

23 MR. ESTEY: Some of the arithmetic
24 intrigues me a little bit. In Tables 2 and 2A, why
25 is it that the increase of \$200.00, which is Table
26 No. 2, and then you go to 2A and it increases \$500.00,
27 why is it that Table 2's rate is only twice what Table
28 1 is?

29 MR. MacDONALD: I think it increases
30 \$300.00 — it goes from \$200.00 to \$500.00.

MR. ESTEY: Oh, I see, it is \$300.00 to



1 to \$500.00 and \$300.00 to \$1,000.00?

2 MR. MacDONALD: Yes.

3 THE COMMISSIONER: Where are you now?

4 MR. MacDONALD: Table 2 and Table 2A.

5 MR. ESTEY: My arithmetic was inaccurate.

6 I wondered why an increase of the size of Table 2A
7 was twice what Table 1 is, but it is the increase of
8 \$300.00 to \$500.00 and \$300.00 to \$1,000.00 which
9 should be mentioned.

10 MR. MacDONALD: In the first case you are
11 talking about a \$200.00 increase and in the second
12 case a \$700.00 increase.

13 MR. ESTEY: Now, when I move on to Table
14 5, this is the increase on the \$75.00 to the \$100.00
15 you are talking about here?

16 MR. MacDONALD: Yes.

17 MR. ESTEY: Again, I take it, that the
18 increase in the past pensions is done by paying ten
19 payments of \$1,800,000.00, and this takes into account
20 that at the end of the ten years, you will have fewer
21 of those pensions in existence and they will all
22 dwindle down to zero on this computation?

23 MR. MacDONALD: The basic calculation of
24 \$15,000,000.00 at a full capitalized value takes into
25 account the combination of mortality expected and
26 interest rate expected. You then translate that
27 actuarially into the alternative amortized amount which
28 will provide exactly the same amount of money having
29 regard to those same factors, but over a ten year period.

30 MR. ESTEY: Yes. The same comment applies



1 to 5A?

2 MR. MacDONALD: Yes, sir.

3 MR. ESTEY: And all of these percentages
4 are based on the 1965 assessments?

5 MR. MacDONALD: Yes, it does not take
6 into account any adjustment in payroll that might take
7 place.

8 MR. ESTEY: It is assuming a constant
9 dollar in the payroll and a constant number of people
10 tolerated by Schedule 1 and if you increase the assess-
11 ment by that percentage over the 1965 base, you would
12 be able to finance these increases?

13 MR. MacDONALD: This is a dollar payout
14 that would have to take place if this particular type
15 of amendment programme was adopted.

16 MR. ESTEY: That is the payout?

17 MR. MacDONALD: Yes. The dollar figure
18 is the more meaningful figure.

19 MR. ESTEY: And your income coming in
20 is computed with reference to the base in 1965. If
21 the base changes, the rate obviously changes?

22 MR. MacDONALD: If the percentage changes,
23 the rate changes, yes.

24 MR. ESTEY: That takes me down to Tables
25 11 and 12. This is the study about reducing the
26 waiting period to one day without paying for the date
27 of accident, as against reducing to one day when you
28 pay for the accident?

29 MR. MacDONALD: Yes.

30 MR. ESTEY: I take it the cost of the



1 day of the accident is \$477,000.00?

2 MR. MacDONALD: That is the cost of the
3 day of the accident for the present compensation
4 claims, that is before a proposed change in the waiting
5 period. That is what is now being paid for the day of
6 accident for existing compensation claims.

7 MR. ESTEY: Oh, that is the reason why
8 you can't add that quantity to the next quantity
9 \$212,000.00 and get the quantity in Table 12, because
10 when you reduce the the waiting period then you affect
11 the number of days of accident which you are going to
12 have to pay?

13 MR. MacDONALD: Reinstate as a compensable
14 day all of the existing compensation.

15 MR. ESTEY: The difference between the
16 two standards?

17 MR. MacDONALD: Yes.

18 MR. ESTEY: So the difference between
19 your \$477,794.00 in Table 12 cannot be made up of the
20 figures in Table 11?

21 MR. MacDONALD: Actually, what it does,
22 it puts back in the \$477,000.00, keeps in the
23 \$212,000.00 and adds the day of accident for the claims
24 which are less than three days.

25 MR. ESTEY: Which is \$105,000.00?

26 MR. MacDONALD: If that is the total,
27 I haven't totalled it.

28 MR. ESTEY: That extra day of compensa-
29 tion on an accident day when you changed from three
30 to one will cost \$105,000.00 more than if you had not



1 change^d from three to one but paid the day of the
2 accident. So that emphasizes the expense, does it not,
3 of reducing that waiting period?

4 THE COMMISSIONER: This is one thing I
5 have not been following. It can be elucidated at a
6 later time.

7 MR. ESTEY: If I can remember it, Mr.
8 Commissioner. Now, I only have one last question: and
9 that is this, that the administrative cost that you
10 referred to of processing a claim is affected by
11 reducing the waiting period because you will have to
12 then have a report for a claim which heretofore you
13 had no interest in. So that your costs go up to that
14 extent when you reduce the waiting period?

15 MR. MacDONALD: There would be an increased
16 administration cost if the waiting period were reduced
17 and we have not made any attempt to calculate that.

18 THE COMMISSIONER: There would be an
19 increase if it were reduced?

20 MR. MacDONALD: Well, I think you have to
21 realize, sir, there would be more enquiry necessary
22 and, therefore, there has to be some cost related to
23 that. I think, perhaps, if I read my comments relating
24 to the brief which was earlier introduced suggesting
25 that administration costs of the Board came down and,
26 therefore, in the last change the waiting period could
27 not have had any effect, it might clarify this point.

28 THE COMMISSIONER: As you say, though,
29 it would go up?

30 MR. MacDONALD: I think the Board's



1 ingenuity in dealing with claims on a continuing basis
2 is always there and can have a lessening effect on any
3 increase. Certainly, there is the situation that
4 as you introduce more and more into your activity,
5 a computer analysis of what you are doing, you can
6 perhaps reduce over-all administration expenses to a
7 greater degree than the additional cost of inquiry
8 might be.

9 MR. ESTEY: One point, if you are
10 finished with that one which came out yesterday or
11 Friday. Under Section 43, there is a temporary total
12 disability minimum prescribed of \$30.00 per week, and
13 the comment was made that that \$30.00 a week payment
14 is less than Ontario's prescribed minimum wage set
15 by government policy in the statute.

16 THE COMMISSIONER: It is 75 percent of
17 the minimum wage?

18 MR. ESTEY: It is 75 percent of the
19 minimum wage, is that the origin of that figure?

20 MR. MacDONALD: When the Act was amended
21 to put in a \$30.00 minimum, consideration was given
22 to the fact that the average wage was \$1.00, the
23 average work week was 40 hours and, therefore, 75
24 percent of 40 became \$30.00. There are many industries
25 even now where average wages are less than \$1.00 per
26 hour, farming notably, some of the service industries
27 where they work less than 40 hours, so that, in fact,
28 you do have, as indicated by the table we just looked
29 at, certain people who are earning less than the
30 \$30.00 minimum and they would be compensated according



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1 to the operation of that minimum at their wage. There
2 would be no wage loss for them. The 75 percent factor
3 is not applied and they get their wages.

4 MR. ESTEY: Thank you very much, Mr.
5 MacDonald.



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TABLE 9	ACTUAL EARNINGS FOR TEMPORARY TOTAL DISABILITY AWARDS.

Amendment	Effective Date	Schedule	Full Capitalized Cost	Ten Year Amortized Cost	of Outstanding Amortized Cost at Dec. 31/65
Standardization of widows' and foster mothers' pensions from \$40. or \$45. to \$50. per month; children's pensions from \$10. to \$12. per month, and orphans' pensions from \$15. to \$20. per month.	July 1, 1948	1	\$ 3,354,716.00		Not Applicable
		2	<u>487,177.00</u>		
			\$ 3,841,893.00		
Standardization of widows' and foster mothers' pensions to \$75. per month; children's pensions to \$25. per month, and orphans' pensions to \$35. per month.	Apr. 1, 1960	1	\$ 6,961,183.00		
		2	<u>2,933,089.00</u>		
			\$ 9,894,272.00		
Payments current costed for the period Apr. 1/60 to Dec. 31/62.					
			1961 - \$647,481.75	1962 - \$598,990.50	
	Jan. 1, 1963	1	\$ 5,575,685.00	\$ 667,639.	\$4,139,200.
Children's pensions increased from \$25. to \$40. per month, and orphans' pensions from \$35. to \$50. per month.	July 1, 1963	1	\$ 2,334,352.00	\$ 274,438.	\$1,701,400.
		2	<u>463,810.00</u>		
			\$ 2,798,162.00		
All P.D. pensions brought to a 75% basis, subject to following minimums: Minimum pension \$100. per month when 100% disabled. When earnings between \$100.01 and \$150., pension at 100% is actual earnings. When earnings between \$150.00 and \$200., pension at 100% is \$150. When earnings over \$200., pension at 100% is 75% of earnings.	July 1, 1965	1	\$ 8,747,146.86	\$1,028,358.	\$7,881,100.
		2	<u>1,399,157.29</u>		
			\$10,146,304.15		

Year	Compensation		Capitalized Values				Medical Aid				Total	
	Schedule 1	Rate #306	Schedule 1	Rate #306	Schedule 1	Rate #306	Schedule 1	Rate #306	Schedule 1	Rate #306	Schedule 1	Rate #306
	\$	c.	\$	c.	\$	c.	\$	c.	\$	c.	\$	c.
1960	20,390,061.66	200,921.15	14,623,584.51	67,603.75	13,285,545.01	138,923.97	48,299,191.18	407,448.87				
Base Year												
1961	20,366,878.24	218,068.06	16,140,021.25	89,681.50	14,107,089.29	167,059.87	50,613,988.78	474,809.43				
% Increase	- .1	8.5	10.4	32.7	6.2	20.3	4.8	16.5				
1962	21,282,153.78	283,113.21	15,450,676.34	165,806.99	14,616,058.67	198,611.32	51,348,888.79	647,531.52				
% Increase	4.4	40.9	5.7	145.3	10.0	43.0	6.3	58.9				
1963	23,696,130.89	323,558.12	15,525,167.24	109,741.75	15,870,497.90	230,627.60	55,091,796.03	663,927.47				
% Increase	16.2	61.0	6.2	62.3	19.5	66.0	14.1	62.9				
1964	28,279,339.73	545,963.91	17,712,215.37	136,534.00	17,690,093.99	321,230.53	63,681,649.09	1,003,728.44				
% Increase	38.7	171.7	21.1	102.0	33.2	131.2	31.8	146.3				
1965	33,683,446.61	861,015.69	22,571,908.75	322,757.50	20,053,787.68	440,367.65	76,309,143.04	1,624,140.84				
% Increase	65.2	328.5	54.4	377.4	50.9	217.0	58.0	298.6				

Year	Compensation		Rate #076		Capitalized Values				Medical Aid				Total	
	Schedule 1	\$	c.	\$	c.	Schedule 1	\$	c.	Rate #076	Schedule 1	\$	c.	Schedule 1	Rate #076
1960	20,390,061.66	423,750.38				14,623,584.51	527,046.41		13,285,545.01	241,470.01			48,299,191.18	1,192,266.80
Base Year														
1961	20,366,878.24	450,013.91				16,140,021.25	434,068.31		14,107,089.29	284,574.72			50,613,988.78	1,168,656.94
% Increase	- .1	6.2				10.4	-17.6		6.2	17.9			4.8	-2.0
1962	21,282,153.78	475,212.63				15,450,676.34	569,580.25		14,616,058.67	252,970.58			51,348,888.79	1,297,763.46
% Increase	4.4	12.1				5.7	8.1		10.0	4.8			6.3	8.8
1963	23,696,130.89	470,644.08				15,525,167.24	609,632.65		15,870,497.90	292,943.14			55,091,796.03	1,373,219.87
% Increase	16.2	11.1				6.2	15.7		19.5	21.3			14.1	15.2
1964	28,279,339.73	477,197.33				17,712,215.37	421,967.50		17,690,093.99	301,348.23			63,681,649.09	1,200,513.06
% Increase	38.7	12.6				21.1	-19.9		33.2	24.8			31.8	.7
1965	33,683,446.61	650,194.56				22,571,908.75	657,401.50		20,053,787.68	406,271.22			76,309,143.04	1,713,867.28
% Increase	65.2	53.4				54.4	24.7		50.9	68.2			58.0	43.7

TABLE 4

SUMMARY OF MEDICAL AID COSTS, 1960 - 1965

Type	1960	1961	1962	1963	1964	1965
Doctors	\$ 4,693,155.69	\$ 4,709,209.03	\$ 4,766,081.90	\$ 5,524,629.33	\$ 6,154,307.95	\$ 7,040,414.48
Hospitals	8,772,932.09	9,389,395.12	10,080,774.78	10,666,133.21	11,936,311.32	13,152,107.07
All Other	1,497,569.21	1,697,587.35	1,595,061.48	1,591,972.03	1,650,288.41	2,043,061.83
	\$14,963,656.99	\$15,796,191.50	\$16,441,918.16	\$17,782,734.57	\$19,740,907.68	\$22,235,583.38
% Increase		5.6	9.9	18.8	31.9	48.6

TABLE 5CHANGE IN DEFINITION OF "ACCIDENT"

% increase in number of claims allowed for compensation by reason of new definition of "accident"	1.1%
Estimated annual compensation cost for claims allowed only by reason of new definition of "accident"	<u>\$488,000.</u>

TABLE 6CHANGE IN WAITING PERIOD FROM 5 TO 3 DAYS

% increase in number of claims allowed for compensation by reason of change in waiting period from 5 to 3 days	7.4%
Estimated annual compensation cost for claims allowed only by reason of change in waiting period from 5 to 3 days	<u>\$147,725.</u>

TABLE 7RATE NUMBER 306

		<u>% Increase in Number of Cases</u>
Annual cost of retroactive pension increases	\$18,091.	
Estimated annual cost of change in waiting period from 5 to 3 days	3,800.	9.8
Estimated annual additional cost due to change in definition of "accident"	32,600.	2.1

TABLE 8RATE NUMBER 076

		<u>% Increase in Number of Cases</u>
Estimated annual additional cost due to change in definition of "accident"	<u>\$38,500.</u>	3.0

TABLE 9ACTUAL EARNINGS FOR TEMPORARY TOTAL DISABILITY AWARDS1965 SURVEY

Annual Earnings	No. of Claims	Percentage
Under \$1,000	87	.4
\$1,000 and under \$ 2,000	555	2.4
\$2,000 and under \$ 3,000	2,876	12.4
\$3,000 and under \$ 4,000	4,844	20.8
\$4,000 and under \$ 5,000	6,069	26.1
\$5,000 and under \$ 6,000	4,567	19.7
\$6,000 and under \$ 7,000	2,279	9.8
\$7,000 and under \$ 8,000	1,135	4.9
\$8,000 and under \$ 9,000	441	1.9
\$9,000 and under \$10,000	201	.9
\$10,000 and over	174	.7
	<u>23,228</u>	

1966 SURVEY

25.2% of claims were above the \$6,000 maximum.

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TABLE 1PROPOSED BENEFIT INCREASING MAXIMUM EARNINGS BASIS TO \$7,000.

		<u>% Increase</u>
Estimated annual additional cost	<u>\$1,800,000.</u>	2.2

TABLE 2PROPOSED BENEFIT INCREASING LUMP SUM AWARDS IN DEATH CASES TO \$500.

		<u>% Increase</u>
Estimated annual additional cost	<u>\$ 45,000.</u>	.1

TABLE 2APROPOSED BENEFIT INCREASING LUMP SUM AWARDS IN DEATH CASES TO \$1,000.

		<u>% Increase</u>
Estimated annual additional cost	<u>\$158,000.</u>	.2

TABLE 3PROPOSED BENEFIT INCREASING BURIAL ALLOWANCE TO \$500.

		<u>% Increase</u>
Estimated annual additional cost	<u>\$ 65,000.</u>	.1

TABLE 4PROPOSED BENEFIT INCREASING BURIAL ALLOWANCE TO \$700.

		<u>% Increase</u>
Estimated annual additional cost	<u>\$130,000.</u>	.2

TABLE 4APROPOSED BENEFIT INCREASING BURIAL ALLOWANCE TO \$900.

		<u>% Increase</u>
Estimated annual additional cost	<u>\$195,000.</u>	.2

TABLE 5PROPOSED BENEFIT INCREASING WIDOWS' PENSIONS TO \$100. PER MONTH

		<u>% Increase</u>
Capitalized cost of increasing existing widows' pensions -	<u>\$15,203,000.</u>	
Ten year amortized cost	\$1,820,000.	2.2
Estimated annual additional cost of increasing new widows' pensions	885,000.	1.1

TABLE 5APROPOSED BENEFIT INCREASING WIDOWS' PENSIONS TO \$125. PER MONTH

		<u>% Increase</u>
Capitalized cost of increasing existing widows' pensions -	<u>\$30,405,000.</u>	
Ten year amortized cost	\$3,641,000.	4.4
Estimated annual additional cost of increasing new widows' pensions	1,770,000.	2.2

TABLE 6PROPOSED BENEFIT INCREASING CHILDREN'S PENSIONS TO \$60. PER MONTH

		<u>% Increase</u>
Capitalized cost of increasing existing children's pensions	- <u>\$4,011,000.</u>	
Ten year amortized cost	\$ 480,000.	.6
Estimated annual additional cost of increasing new children's pensions	780,000.	.9

TABLE 7PROPOSED BENEFIT INCREASING CHILDREN'S PENSIONS TO \$75. PER MONTH

		<u>% Increase</u>
Capitalized cost of increasing existing children's pensions	- <u>\$7,064,000.</u>	
Ten year amortized cost	\$ 846,000.	1.0
Estimated annual additional cost of increasing new children's pensions	1,365,000.	1.7

TABLE 8PROPOSED BENEFIT INCREASING ORPHANS' PENSIONS TO \$75. PER MONTH

		<u>% Increase</u>
Capitalized cost of increasing existing orphans' pensions -	<u>\$154,000.</u>	
Ten year amortized cost	\$18,000.	.0
Estimated annual additional cost of increasing new orphans' pensions	18,000.	.0

TABIE 9

PROPOSED BENEFIT INCREASING COBETED WIDOWS' AND CHILDREN'S PENSIONS
TO 50% OF AVERAGE EARNINGS OF DECEASED HUSBAND

Estimated annual additional cost \$ 7,674,000. 9.3

PROPOSED BENEFIT INCREASING COBETED WIDOWS' AND CHILDREN'S PENSIONS
TO 75% OF AVERAGE EARNINGS OF DECEASED HUSBAND

Estimated annual additional cost \$10,659,000. 13.0

TABLE 11

PROPOSED BENEFIT REDUCING WAITING PERIOD TO 1 DAY
WITH NO PAYMENT FOR DAY OF ACCIDENT

		<u>% Increase</u>
Estimated reduced annual cost by not paying for day of accident on present 3 day waiting period	\$477,000.	
Estimated annual cost of change in waiting period from 3 days to 1 day with no payment for day of accident	<u>212,000.</u>	
Estimated annual saving	<u>\$265,000.</u>	.3

TABLE 12

PROPOSED BENEFIT REDUCING WAITING PERIOD TO 1 DAY
WITH PAYMENT FOR DAY OF ACCIDENT

		<u>% Increase</u>
Estimated annual additional cost	<u>\$794,000.</u>	1.0

TABLE 13

PROPOSED BENEFIT INCREASING COMPENSATION BASIS TO 80% OF EARNINGS*

		<u>% Increase</u>
Estimated annual additional cost	\$5,000,000.	6.1

*Not applying a compensation limit.



1 MR. ESTEY: Mr. Commissioner, we have a
2 number of alternatives here, but, subject to your
3 approval, we would like to not deal with Mr. Kerr's
4 comments on the balance of the item benefit payments
5 at the moment, because we have Mr. Armand Clement of
6 the Unemployment Insurance Commission, Ontario Branch,
7 who has come in to tell us how the Unemployment
8 Insurance Commission deal with these temporary disabili-
9 ty cases and permanent partial disability cases.

10 Mr. Clement, you are employed by the
11 Unemployment Insurance Commission?

12 MR. CLEMENT: Yes, sir.

13 MR. ESTEY: In the City of Toronto?

14 MR. CLEMENT: Yes.

15 MR. ESTEY: And, what is your position?

16 MR. CLEMENT: I am Supervisor of
17 Adjudication in the ~~Regional~~ Office. We handle
18 all contentious claims for the Ontario Region.

19 MR. ESTEY: Some discussions have arisen
20 here in this Royal Commission proceedings, Mr.
21 Clement, as to what the policy and practice is in
22 your Commission's administration of the Unemployment
23 Insurance Act when you receive an application from a
24 person who has been employed, but who is disabled,
25 either fully or partially, either temporarily or
26 permanently. We had one case filed where the gentleman
27 in question was receiving a partial disability payment
28 for what seemed to be a temporary disorder, and he
29 applied for Unemployment Insurance to the Unemployment
30 Insurance Commission and you are said to have turned



1 him down. With all that background, would you tell us,
2 sir, first of all, what is your policy under your
3 statute with respect to people who are on compensation?

4 MR. CLEMENT: In the first instance, a
5 person who has an assessed disability/ ^{and} is in receipt
6 of our permanent settlement while this income will not
7 affect his Unemployment Insurance benefits.

8 THE COMMISSIONER: Are you referring to
9 a permanent settlement for a partial disability or for
10 a complete one?

11 MR. CLEMENT: For a partial one. If a
12 person is deemed capable of some employment but not to
13 the full extent that he was before. He may have any
14 kind of a pension, \$15.00 to \$50.00 a month, but this
15 would not affect his benefits.

16 THE COMMISSIONER: It would not affect
17 his right to Unemployment Insurance?

18 MR. CLEMENT: No.

19 THE COMMISSIONER: That is a permanent
20 settlement for a partial disability?

21 MR. CLEMENT: Yes.

22 THE COMMISSIONER: What about a temporary
23 settlement?

24 MR. CLEMENT: In the case of a person
25 who has suffered a temporary disability, if he is con-
26 sidered capable of light work and he reduces compensa-
27 tion to a temporary partial basis, this, again, will
28 not affect his benefits under the Act.

29 MR. ESTEY: I take it your only standard
30 is whether or not there is work available of the type



1 the man is qualified and capable of doing?

2 MR. CLEMENT: Even then, if you didn't
3 have work immediately available for him, we would
4 still pay him his benefits, provided that he is employ-
5 able, in spite of his disability he is employable.

6 MR. ESTEY: If he is not employable, he
7 doesn't come under your statute at all?

8 MR. CLEMENT: No, in that case we would
9 probably consider him eligible for total temporary
10 disability benefits.

11 MR. ESTEY: Then, the Compensation Board
12 does not consider him capable of working and the
13 standard doesn't, so they can't prove his entitlement
14 to benefit?

15 THE COMMISSIONER: On a partial disability,
16 he gets full compensation for a certain period when
17 they consider him to be totally disabled, as I under-
18 stand it?

19 MR. CLEMENT: Yes.

20 THE COMMISSIONER: And at the end of that
21 time they say "We can assess the amount of your partial
22 disability and you are now capable of light duty work"?

23 MR. CLEMENT: Yes.

24 THE COMMISSIONER: This is not a permanent
25 disability but, for the time being, this other situation.
26 Under those circumstances, if he does not secure work
27 you'd give him Unemployment Insurance?

28 MR. CLEMENT: Yes, he is entitled to
29 full benefits under the Act, because the temporary
30 partial disability benefits that he gets are not



1 considered income under the regulations, so, therefore,
2 it is as if he didn't have any.

3 MR. ESTEY: Now, we have had some dis-
4 cussion before us about a case where the gentleman in
5 question was classified as fit for light duty and he
6 went to your Commission and apparently the Commission's
7 view or the National Selective Service's view of his
8 capability was that he should be looking for work at
9 a lower rate than his former rate. What happens in
10 those cases?

11 MR. CLEMENT: Well, this would come
12 under the availability provisions of the Act. It has
13 nothing to do with disability. It is just that a
14 person is holding out for more money than he is
15 actually worth on the present labour market. So, in
16 a case like that, he could be considered not available.
17 This would not happen in the first instance, it would
18 happen only after the passage of time when he has had
19 a reasonable period of time to find a job and he
20 hasn't, and then they will interrogate him and ask him
21 if he will accept the prevailing rate and he says
22 "No, I used to earn \$2.50 an hour and this is all I
23 will accept". Then, we know that he is disabled and
24 he couldn't get that rate now and the employment
25 officer says, "This is not realistic", and he would
26 be disqualified, but this is not on account of his
27 compensation, it is on account of his attitude.

28 MR. ESTEY: It would be true of anybody
29 who over-placed himself and, thereby, was available
30 but would not take the work that was ready for him?



1 MR. CLEMENT: No, they are holding out
2 for more money than they can actually get.

3 MR. ESTEY: So, in summary, Mr. Clement,
4 you are saying that his receipts from the Workmen's
5 Compensation fund have no bearing on what he gets for
6 Unemployment Insurance?

7 MR. CLEMENT: No.

8 MR. ESTEY: There his test is whether
9 or not he is unemployed and whether or not there is
10 work reasonably available?

11 MR. CLEMENT: Yes, whether he is available
12 or not within the meaning of the Act. The only type
13 of compensation that can affect his benefit is that
14 under total temporary benefits - total temporary
15 disability benefits. If the person is in receipt of
16 total temporary disability benefits under the Compensa-
17 tion Board then he will not be eligible for U.I.
18 benefits, not considered eligible for work.

19 MR. ESTEY: He is receiving that in lieu
20 of income, so it is as though he was employed and,
21 therefore, he is not under the Act.

22 MR. CLEMENT: Now, it is quite comparable
23 to being employed because he is receiving in most
24 cases 75 percent of his former income.

25 MR. ESTEY: And he is receiving that
26 because he is disabled completely?

27 MR. CLEMENT: Yes.

28 MR. ESTEY: And, therefore, he is not
29 ready for work under your Commission?

30 MR. CLEMENT: As soon as he recovers, he



1 comes back under our jurisdiction.

2 MR. ESTEY: Thank you very much, sir.

3 THE COMMISSIONER: Thank you very much.

4 MR. ESTEY: We have some more discussions
5 on this benefit question, Mr. Commissioner, with
6 witnesses whom I propose to call tomorrow morning.

7 THE COMMISSIONER: Right. We stand
8 adjourned until tomorrow at ten A.M.

9
10 -- At 4:30 P.M., the Hearing adjourned until 10:00
11 A.M., Wednesday, October 5th, 1966.
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PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.

8

DATE

5 October 1966

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Toronto, Ontario

1 IN THE MATTER OF The Public Inquiries
2 Act, R.S.O., 1960, Ch. 323

3 - and -

4 IN THE MATTER OF an Inquiry Into and
5 Report Upon The Workmen's Compensation
6 Act

7 -----
8 BEFORE: The Honourable Mr. Justice W.A.
9 McGillivray, Commissioner, at
10 Room 200, 67 Richmond Street
11 West, Toronto, Ontario, on
12 Wednesday, October 5, 1966.
13 -----

14 APPEARANCES:

15 W.Z. Estey, Q.C.)
16 and)
17 H.D. Guthrie) Counsel to the Commission

18 A.J. McKichan Retail Council of Canada

19 W.R. Kerr, Director of Claims &) Workmen's Compensation
20 Rehabilitation Services) Board.
21 G.R. Poole, Executive Director)
22 A.G. MacDonald,

23 T.J. Sommerville Automotive Transport
24 Association of Ontario

25 D.S. Keen)
26 H.E. Russell) Canadian Manufacturers'
27 Association

28 W.R. Burnett Q.C. C.N.R. et al

29 J.M. Arnold Bell Telephone Company
30 of Canada

J.H. Craigs Ontario Federation of
Labour

E.A. Perry Ontario Mining
Association



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1 --- At 10:00 a.m., the Hearing commenced.

2 MR. ESTEY: Mr. Chairman, yesterday we
3 heard from Mr. MacDonald as to the Board's forecast of
4 costs and then there are two or three other aspects of this
5 topic which are to be discussed by the Board. However, as
6 you will recall, we put Mr. Clement of the Unemployment
7 Insurance Commission in, because of timetable troubles
8 This morning, we have a gentleman who was here all day
9 yesterday but who came in too late to get in ahead of Mr.
10 MacDonald, and I am speaking of Mr. McKichan of the Retail
11 Council of Canada. With your permission, sir, I would like
12 to ask the Retail Council of Canada to present their brief
13 as it deals with the Financial Benefit topics, and if you
14 wish to refer, in a general way to the other topics which
15 have gone before and which you were not able to be here
16 discuss, you may do so.

17 MR. McKICHAN: Thank you, sir. My name is
18 Alistair McKichan and I represent the Retail Council of
19 Canada. Mr. Commissioner, our comments on the sections of
20 the Act which deal with the level of pensions and other
21 benefits, occur on pages 2 and 3 of our submission.

22 THE COMMISSIONER: Mr. McKichan, I under-
23 stand that you were unable to be present on the other
24 matters. If you wish to present all of your submissions
25 today, we might follow your brief.

26 MR. McKICHAN: I would like to, if that is
27 convenient, sir.

28 THE COMMISSIONER: Fine. Do it any way
29 you like. You can tell us about it or you can read it

30 MR. McKICHAN: I think, Mr. Commissioner,



1 with your permission, I will take the first page of our
2 submission as read and being introductory in content

3 INTRODUCTION

4 1. Retail Council of Canada appreciates this
5 opportunity of presenting to you its views on:

6 (a) The content of the Workmen's Compensa-
7 tion Act, and

8 (b) The operation of the Act in other
9 than matters of detail and administration:

10 2. This Council is the successor organization
11 to Canadian Retail Federation. Its direct membership
12 comprises a large proportion of the medium-sized and larger
13 retailers doing business in Ontario. Filed with this
14 submission as an exhibit is a list of our direct members
15 doing business in Ontario. These direct members perform
16 some 35 per cent of the total retail store business carried
17 on in the Province. Affiliated with the Council are a
18 number of specialized retail trade associations also listed
19 in the exhibit referred to above.

20 FRAMEWORK OF THE ONTARIO WORKMEN'S COMPENSATION LEGISLATION
21 AND ITS APPLICATION BY THE WORKMEN'S COMPENSATION BOARD

22 3. Our members have expressed general satis-
23 faction, both with the principles and most of the detail
24 of the Ontario Workmen's Compensation legislation. They
25 are also well satisfied with the Act's administration by
26 The Workmen's Compensation Board. They believe that the
27 Ontario Board's reputation as a model administration in
28 this field is well-deserved.

29 4. While details of the administrative and clerical
30 al procedures adopted by the Board are expressly excluded



1 from the terms of reference of the Commission, the Council
2 wishes to take this opportunity of expressing its approval
3 of the progressive spirit shown by the Board in utilizing
4 efficient administrative and clerical procedures.

5 5. Because of the nature of the trade, the
6 retail industry has one of the most favourable experience
7 records of any employer group. The industry has, however,
8 a lively interest in safety and Workmen's Compensation.
9 The trade is labour intensive - one person in seven in
10 Ontario is employed in the distributive sector. An accident
11 rate low in proportion to the number of employees can still
12 imply substantial numbers of compensable incidents. So
13 far as costs are concerned relatively small variations in
14 contribution rate can have significant effect on the costs.

15 On the top of page 2, we deal with Aggrava
16 tion of Pre-existing Conditions. Our comments on this
17 are as follows.

18 6. The determination of whether an existing
19 condition has been aggravated by an employee's work and the
20 extent of the aggravation is always a difficult task. The
21 Council knows the Board gives such cases close scrutiny
22 and it wishes to express its hope that the Board continues
23 to treat such incidents with particular care. It is our
24 understanding that at one time the Board required proof
25 of an actual accident that caused the aggravation. Apparent
26 ly, the Board no longer requires proof of such an occurrence.
27 While not infallible, it appears to us that the Board's
28 former practice was reasonable and as practicable a test
29 as any, and we recommend that, in the absence of any better
30 criterion, consideration be given to its readoption.



1 Moving, Mr. Commissioner, to the level of
2 Pensions, and I should preface our remarks by saying that
3 we did not attempt to give you our opinions on the present
4 levels either of the Pensions or Disability Payments because
5 it was our feeling that these were reasonable in the light
6 of the Province's economic conditions and in the light of
7 average earnings and that it would perhaps be scarcely
8 appropriate to do so, when these levels of benefits were
9 revised from time to time and because this Commission
10 happened to be sitting now, we would only be able to comment
11 on one particular level of pensions. However, we did apply
12 ourselves to the general concept of pensions being tied
13 to the cost of living and things of that nature.

14 7. In Ontario, levels of these payments have
15 been adjusted at regular intervals. The Council believes
16 that such adjustments have generally kept pace with the
17 cost of living and the ability of the Provincial economy
18 to sustain increases. The Report of the Royal Commission
19 established to review Workmen's Compensation legislation
20 in British Columbia, recommended that the level of pensions
21 be tied to the consumer price index. The Council is sym-
22 pathetic to the concept that the value of such pensions should
23 be related to the cost of living. It believes, however,
24 that there are advantages in not irrevocably tying the
25 level to the cost of living. There are occasions when it
26 may be desirable for the sake of the stability of the
27 economy to ensure that neither wages nor any other type
28 of income move precisely in step with the cost of living.
29 If a government is able to exercise restraint over wage
30 increases, and of course we recognize that this is a



1 problematical situation, it would seem to be appropriate
2 to reserve the same right in regard to Workmen's Compensa-
3 tion benefits. The Council, therefore, recommends continu-
4 ation of the present system under which the Government has
5 the opportunity of recommending periodic changes in compen-
6 sation rates to the Provincial Legislature.

7 THE COMMISSIONER: Are you acquainted with
8 what has happened in British Columbia where Mr. Justice
9 Tysoe's recommendation was accepted?

10 MR. McKICHAN: Yes, we were, sir.

11 THE COMMISSIONER: His recommendation was
12 that new pensions be tied to it but he made no recommenda-
13 tion with regard to existing pensions. Do you know of the
14 nature of the legislation there where all pensions were
15 included?

16 MR. McKICHAN: We were aware of this, sir,
17 but it was our feeling, for the reasons we set out, that
18 it might be desirable to omit that.

19 THE COMMISSIONER: I was wondering if you
20 had any detailed information about what had occurred in
21 British Columbia.

22 MR. McKICHAN: No more than that we under-
23 stood that the recommendation had been accepted.

24 THE COMMISSIONER: I see, thank you.

25 MR. McKICHAN: On Sections 40 and 41:
26 Scale of Compensation for Temporary or Total Disability

27 (1) General

28 8. From time to time, suggestions are made
29 that compensation payments for temporary disability should
30 be set at the level of an employee's regular wage. The



1 Council recommends against this suggestion. It is believed
2 that the possibility of an employee being required to
3 bear a part of the cost of an accident can act as a
4 deterrent to the adoption of unsafe working practices.
5 Another consideration is that when an employee is absent
6 from work because of a compensable condition, his expenses,
7 such as travelling, clothing, meals, etc., are reduced
8 while Compensation payments are not subject to income tax.
9 Under the existing system, it is of course in the option
10 of the employer to make up all or part of the salary of
11 injured employees, but we believe it is important that
12 this action continue to be at the discretion of the employer.

13 (ii) Canada Pension Plan - Overlapping of Benefits

14 9. It is our understanding that when the
15 disability benefit provisions of the Canada Pension Plan
16 become effective, and it is my understanding, sir, that
17 this will not be the case for some years yet, four years
18 from this date.

19 THE COMMISSIONER: Knowing little about
20 it, I had understood that that was the case.

21 MR. McKICHAN: This is my understanding
22 of the situation, sir.

23 ... it will be possible for a disabled
24 employee to receive a greater income from the two sources
25 of Canada Pension Plan and Workmen's Compensation benefits
26 than he would in regular wages. This problem is obviously
27 one which will be common to all Provincial Workmen's
28 Compensation Boards and it seems appropriate that similar
29 solutions be found for it. Certainly it is manifestly
30 inappropriate that anyone should enjoy an increase in



1 Income as a result of indemnities paid because of a dis-
2 ability attributable to that person's employment. It would
3 also be unfortunate if, through the cumulative effects of
4 public insurance schemes, the principle of the employee
5 himself bearing some modest part of the economic loss induced
6 by the accident were not adhered to.

7 Section 44: Determination of Ceiling for Calculation of
8 Average Earnings

9 10. From time to time suggestions are made for
10 the increase in the ceiling rate on which average earnings
11 are calculated. It would seem to be most equitable to all
12 industries and to all employees within the industries that
13 the ceiling is only raised when the earnings of a prepon-
14 derance, and we would suggest a substantial preponderance,
15 of employees covered by the Act exceed the existing maximum.
16 We understand this situation has not yet been reached in
17 Ontario and we recommend continuation of the present ceiling
18 until the situation changes.

19 This is moving away, sir, from the section
20 of the Commission's immediate concern, but I understand
21 it has been discussed so, with your permission, I shall
22 proceed to deal with Medical Reports:

23 Section 52: Medical Reports

24 11. Employers are interested in learning of the
25 progress of employees who experience compensable injuries
26 or are afflicted with compensable diseases. Where the
27 employee is away from work for only a relatively short
28 period of time, the employer has little difficulty in
29 ascertaining the employee's progress. However, when the
30 employee is off work for lengthy periods, the employer may



1 experience difficulty in keeping in touch with him and
2 ascertaining the state of his health and the probable dura-
3 tion of his absence from work. It is our suggestion that
4 when an employee has been off work for, say, 13 weeks, the
5 Board make a report to the employer on his condition and that
6 a further report be made at the expiry of every succeeding
7 13 weeks, or such other, but predetermined, period as is most
8 suitable to the Board, during an employee's absence.

9 Section 115: Reports of Accidents.

10 12. This section of the Act obliges employers to
11 report to the Board within three days of an accident, the
12 occurrence of the accident and full details of its occur-
13 rence. We understand that a digest of this information is
14 later relayed by the Board to the appropriate Safety Associa-
15 tion or Associations. It is our further understanding that
16 the information actually reported to the Safety Association
17 is often not sufficiently complete to enable the Association
18 to take appropriate action in regard to the accident. The
19 Safety Association may, for instance, wish to make a change
20 in its recommendations for execution of the particular
21 activity which caused the accident, or may wish to develop
22 statistics related to the occurrence of this and other
23 kindred accidents. It is our recommendation that the report
24 form be so designed that that section of it which details the
25 circumstances of the accident be reproduced in its entirety
26 and be forwarded to the appropriate Safety Association.

27 Section 117: Formation of Associations and Committees

28 13. Retailers carrying on business in Ontario
29 are members of the Industrial Accident Prevention Associa-
30 tion; and representatives of these employers form a



1 committee to advise on the activities of the Association
2 which relate to their industry. The Council believes that
3 the grant which the Board makes toward the operation of
4 this Association is well-justified by the work which it,
5 through its capable staff, undertakes and the results which
6 it achieves. While it may not always be possible to
7 establish a direct ratio between the expenditures made on
8 accident prevention work and the reduction of compensation
9 claims, it is clear that over the long term a relationship
10 exists between the two. The Council is keen to see the work
11 of this and related Associations continued.

12 THE COMMISSIONER: The submission has been
13 made that the composition of those associations should be
14 changed to include representatives of labour. Have you any
15 comment, or has your association any comment to make on
16 that? I don't ask you just to express your own views unless
17 you have an association view.

18 MR. McKICHAN: The committee concerned
19 with the preparation of this brief did consider that point,
20 Mr. Commissioner. It was their feeling that when the
21 costs of the association were borne by the employer, it
22 was appropriate to have an employer direction on the
23 accident association. If, however, it were decided to have
24 employee contribution and employee support of the associa-
25 tion, then I think, probably, they would feel there were
26 good grounds for having employee participation in the
27 association. I think they reached this conclusion because
28 they felt the association was working well at the moment
29 and they saw no need for a change.

30 THE COMMISSIONER: Thank you.



1 MR. McKICHAN: The next point, Mr. Commiss-
2 ioner, deals with Relationship with Medical Practitioners
3 and here, our comment is:

4 14. The Board must rely for the efficient opera-
5 tion of the Act on the cooperation of the medical profession
6 and cannot in any way interfere with the professional
7 decisions of practicing doctors. It is our belief, however
8 that it would be to the benefit of both doctors and their
9 patients and would facilitate the efficient working of
10 Workmen's Compensation procedure if some formal, continuing
11 liaison between the profession as a whole and the medical
12 staff of the Board were established. We had in mind here
13 the distribution of bulletins and other informative material.
14 We believe, for instance, that some doctors may not be
15 aware of the variety of jobs which are available in many
16 businesses for employees suffering from temporary or perm-
17 anent partial disability, and again, that it may be worth-
18 while reminding doctors periodically of the therapeutic
19 benefits to patients of their returning as soon as practic-
20 able to work adjusted to their current physical capability.

21 THE COMMISSIONER: The medical profession
22 might resent such advice from the Board. The average
23 doctor, I suppose, assumes that he knows that, or should,
24 in spite of the fact that a lot of them don't care to
25 advise their patients along those lines.

26 MR. McKICHAN: We realized this was a
27 delicate area, involving as it did, professional respon-
28 sibilities, Mr. Commissioner.

29 THE COMMISSIONER: It is easier for him
30 to say to a patient, "Go to bed for two weeks" rather than,



1 "Go back to work".

2 MR. McKICHAN: This was our feeling and our
3 suggestion was phrased in the way that it be, by way of
4 some regular, informative motion rather than in a didactic
5 form.

6 THE COMMISSIONER: I think that would
7 probably be a good idea, judging from the amount of liter-
8 ature. Judging from the amount of literature that comes
9 onto my desk from various sources, and knowing how busy
10 doctors are, I wonder how much they would read. It would
11 have to be in some form where they could rapidly digest it.
12 However, it is a reasonable suggestion.

13 MR. McKICHAN: We concluded, Mr. Commissioner,
14 by stating:

15 Presumably the flow of more specific infor-
16 mation on the availability of rehabilitation services would
17 also be worthwhile.

18 CONCLUSION

19 15. Representatives of this Council will be
20 happy to make themselves available for consultation with
21 the Commission on any matter where they can be of assistance.

22 All of which is respectfully submitted.

23 THE COMMISSIONER: Thank you, Mr. McKichan.

24 MR. ESTEY: Thank you very much, sir.

25 MR. McKICHAN: Thank you, sir.

26 MR. ESTEY: I understand the remaining
27 points, Mr. Commissioner, which were to be dealt with by
28 Mr. Kerr on behalf of the Board, will be taken up by Mr.
29 Poole this morning.

30 MR. POOLE: Mr. Commissioner, the portion



1 that I am responsible for this morning, is the question
2 of compensation for partial disability.

3 Temporary Partial Disability

4 The reference in the Workmen's Compensation
5 Act for partial disability is contained in Section 41 which
6 reads as follows:

7 "Where temporary partial disability
8 results from the injury, the compensation
9 shall be a weekly payment of 75 per cent
10 of the difference between the average
11 weekly earnings of the workman before
12 the accident and the average amount that
13 he is earning or is physically capable
14 of earning, as determined by the Board,
15 in some suitable employment or business
16 after the accident, and is payable so
17 long as the disability lasts, and
18 subsection 3 of section 42 applies."

19 Temporary Total Disability

20 In order to understand this Section of the
21 Act, that is, Section 41, one must realize that Section
22 40 of the Act deals with temporary total disability and
23 reads as follows:

24 "Where temporary total disability results
25 from the injury, the compensation shall
26 be a weekly payment of 75 per cent of
27 the workman's average weekly earnings
28 during the previous twelve months if
29 he has been so long employed, but if
30 not then for any less period during



1 which he has been in the employ of his
2 employer, and is payable so long as the
3 disability lasts."

4 Therefore, in interpreting and administering
5 the Act the Board must make a distinction between temporary
6 total disability and temporary partial disability.

7 Temporary Partial Disability Based on Medical Evidence

8 It has always been the practice of the Board
9 to consider that temporary partial disability was a medical
10 determination. Thus, when the medical information indicates
11 that the workman is no longer totally disabled and could
12 perform work suitable to his reduced capacities, the Board
13 is required by the Act to reassess the extent of compensa-
14 tion entitlement.

15 Suitable Work Obtained

16 Where a workman during the course of his
17 disablement is able to continue at work performing work
18 within his capabilities but at lesser earnings, he is
19 compensated on the basis of the difference in earnings. If
20 he has been totally disabled and returns to work within
21 his capabilities at lesser earnings he is also compensated
22 on the basis of the difference in the earnings.

23 THE COMMISSIONER: The first sentence in
24 that paragraph refer to temporary, partial disability and
25 the second one to total.

26 MR. POOLE: Well, actually, it is two
27 situations, sir. The first one is where the man does not
28 lay off work at all, he is temporarily disabled, he is able
29 to work at a reduced capacity and, therefore, lesser earn-
30 ings. The second is where he has had to lay off work and



1 then returns to work but is still unable to do the full work
2 that he was able to do before and receives lesser earnings.
3 So he is temporarily, partially disabled in both situations.
4 (1) continuous from the accident.
5 (2) a period of total disability followed by a return to
6 work at a lesser capacity where he receives partial
7 disability.

8 Suitable Work Not Obtained

9 By the Statute the Board must recognize that
10 a workman is partially disabled and although suitable em-
11 ployment is not available and cannot be obtained, Section
12 41 is still effective and the workman is entitled to compen-
13 sation only on the basis of partial disability. The Act
14 indicates that the Board must determine what he is physically
15 capable of earning in suitable employment and apply the same
16 principle as if the workman were at work with limitations as
17 to his capabilities which thus reduce his earnings.

18 Application

19 The application of the principle contained
20 in the Act presents a very grave problem. The extend of
21 temporary disablement of a workman varies greatly through-
22 out his convalescence. Therefore, in order to be as equit-
23 able as possible the Board generally applies a reduction of
24 50 per cent of full compensation in cases of temporary
25 partial disability rather than pay 100 per cent one day
26 and 10 per cent a week or so later, for example.

27 THE COMMISSIONER: Well, let me follow that
28 one. He is temporarily disabled. Under section 41, if, as
29 a result of that temporary disablement -- that is temporary
30 total disability. In other words, your theory is if it is



1 temporary, partial disability, the Board never pays 75
2 per cent of his earnings?

3 MR. POOLE: Very, very seldom, sir, and
4 similarly don't pay on the lower scale either in order to
5 be as equitable as possible.

6 THE COMMISSIONER: I was under a miscon-
7 ception. I thought that in many cases, while they paid
8 100 per cent for a while, and then when he had reached
9 a certain stage, they said, "Well, your disability is
10 only so much and that is how we will pay". But what you
11 say now is that, rather than pay 100 per cent under any
12 circumstances - when I say 100 per cent, I mean 75 per
13 cent of earnings, that is what you refer to by 50 per
14 cent?

15 MR. POOLE: Yes.

16 THE COMMISSIONER: That you have a practice
17 of paying 50 per cent in these cases from the onset of
18 the partial disability and then, instead of terminating
19 it or reducing it as he improves in health, you carry it
20 on for a substantial time.

21 MR. POOLE: To the point where he is able
22 to return to work.

23 THE COMMISSIONER: And it is your opinion
24 that the result of that is that it amounts, in the end,
25 I suppose, to about the same thing as if he had started
26 on a larger compensation and gradually reduced it.

27 MR. POOLE: Yes, sir.

28 THE COMMISSIONER: Then, how long do you
29 carry that on? Are you referring now to temporary partial
30 disability?



1 MR. POOLE: Temporary partial disability.
2 This is not permanent disability.

3 THE COMMISSIONER: So do you carry that on
4 until the temporary partial disability is over?

5 MR. POOLE: That is right.

6 THE COMMISSIONER: And it is only in the
7 cases of temporary total disability where there comes a
8 time where it is no longer temporary that we are hearing
9 about in these other cases that they say they are not able
10 to get work and various other things?

11 MR. POOLE: That is the situation, sir.

12 THE COMMISSIONER: Those are the only cases,
13 then? The total disability of these cases we hear about
14 are all in that class and you are paying this 50 per cent
15 flat throughout the period of partial temporary disability?

16 MR. POOLE: As a general rule. There may
17 be exceptional cases that might be handled somewhat differ-
18 ently, but this is the general practice, the 50 per cent.

19 THE COMMISSIONER: Are you suggesting any
20 change or would any change be of benefit to provide for
21 what is the practice of the Board, rather than the method
22 that is provided now?

23 MR. POOLE: We can't see any change with
24 the statute as it exists.

25 THE COMMISSIONER: That is what I say, do
26 you think it is desirable it should be changed?

27 MR. POOLE: I don't think that we are quite
28 in a position to say that, sir.

29 THE COMMISSIONER: I can make recommenda-
30 tions on anything. Well, I can understand your position.



1 MR. POOLE: Now, there is an exceptional
2 situation which we feel that, in justice, must be considered.

3 The Justice of the Case

4 The problem of compensating for temporary
5 partial disability within the terms of the Act has been
6 present from the very beginning. Sir William Meredith, in
7 drafting the original legislation, stated under Section 41
8 of that Act:

9 "The amount of the weekly payment in the
10 case of partial incapacity shall in no
11 case exceed the difference between the
12 average weekly earnings of the workman
13 before the accident and the average
14 weekly amount which he is earning or is
15 able to earn in some suitable employment
16 or business after the accident but shall
17 bear such relation to the amount of that
18 difference as under the circumstances
19 appears just."

20 Some twenty years ago it became very obvious
21 that where a workman had a special skill and a long period
22 of service with his employer it was impossible for him to
23 obtain employment elsewhere for a short period of time at
24 some other form of work. To overcome the obvious injustices
25 of a literal interpretation of the Act it was felt necessary
26 on humanitarian grounds for the Board to issue the following
27 administrative order. The order ruled that temporary total
28 disability payments could be continued for a short period
29 not to exceed six weeks following a medical declaration
30 that the workman was fit for modified work.



1 Application of the Order

2 1. Where it is not reasonable to expect the
3 injured workman in view of his skill and seniority with
4 his employer to obtain other employment for a short period
5 of time, or

6 2. Where suitable work is not available to the
7 injured workman in his community.

8 Order Not Applicable

9 A workman is not entitled to continuance of
10 the payment of total disability where no work would have
11 been available to the workman had he not been injured.
12 For example, no work might be available to the injured work-
13 man during the period for which payment is contemplated
14 due to the seasonal nature of the injured workman's employ-
15 ment.

16 Vocational Rehabilitation Assistance

17 The Vocational Rehabilitation service of
18 the Board assists the injured workman in obtaining suitable
19 employment.

20 THE COMMISSIONER: Well, one of the things
21 that gives me some difficulty is when you are paying, in
22 the case of any partial disability at the onset of the
23 disability, 50 per cent and you pay it on the basis that
24 that is the difference between what "75 per cent of the
25 difference between the average weekly earnings before the
26 accident and the average amount that he is earning or
27 is physically capable of earning is determined by the
28 Board in some suitable form of employment after the
29 accident." There must be a lot of these injuries, partial
30 disabilities. For instance, a sprained ankle or a



1 broken ankle or something like that where he is 100 per
2 cent disabled, isn't he?

3 MR. POOLE: Oh, yes, there is no question
4 about that.

5 THE COMMISSIONER: But you only pay 50 per
6 cent?

7 MR. POOLE: Oh, no, we pay 100 per cent.

8 THE COMMISSIONER: You pay 100 per cent?

9 MR. POOLE: If he is totally disabled.

10 THE COMMISSIONER: That won't become a per-
11 manent disability, though. It is a temporary partial dis-
12 ability?

13 MR. POOLE: No, it is a temporary total
14 disability until he reaches a point in his convalescence
15 where he is able to do something.

16 THE COMMISSIONER: For a temporary total
17 disability you pay 100 per cent and sometimes you say this
18 is a temporary partial disability and "We will do it on this
19 basis."

20 MR. POOLE: That is right.

21 MR. ESTEY: Mr. Poole, under section 41 of
22 the Act, you have a legislative mandate to work out a for-
23 mula and apply it to the man when his condition is described
24 as temporary partial disability. Now, if I understand you
25 correctly, you don't follow what the legislature has laid
26 down to the letter, but you have a ready rule - I won't use
27 the word "arbitrary" -- instead of trying to work out
28 that formula and saying, "We will give you half your wages",
29 assuming on the average that half the wages lost will come
30 out to the result prescribed by section 41.



1 MR. POOLE: Section 41, as you indicate,
2 indicates that if a man returns to work, we must accept and
3 pay compensation on the difference; that is, if he is
4 partially disabled and returns to work at reduced earnings
5 we must pay the difference between those earnings and the
6 earnings at the time of the accident.

7 MR. ESTEY: So the nub of this is that the
8 Board's view of section 41 is that the formula only comes
9 to work when the man returns to his employment?

10 MR. POOLE: That is right.

11 MR. ESTEY: I was wondering, then, what the
12 words mean, "or is physically capable of earning" -- would
13 that not cover the situation where he was not working but
14 the Board determined that he was physically capable of
15 working?

16 MR. POOLE: That's right.

17 MR. ESTEY: Then, does not the formula
18 also apply?

19 MR. POOLE: In every individual case it
20 is very, very difficult to determine exactly what the cap-
21 abilities might be, and those capabilities change as he
22 progresses in his convalescence.

23 MR. ESTEY: I take it you have got two
24 variable factors there: One is his capacity, and the second
25 one is the availability of work suitable to the capacity.

26 MR. POOLE: That is right.

27 MR. ESTEY: But the section contemplates
28 that you will prescribe the formula either where he goes
29 back to work or is physically capable of going back to
30 work, and the Board has to then make two difficult computa-



1 tions, firstly, his earning capacity and secondly, what the
2 labour market is for that capacity. He may have a capacity
3 for light work of a kind which is non-existent.

4 MR. POOLE: However, I think the section
5 indicates that the determination shall be on the basis of
6 what he would be able to earn if he were capable of finding
7 work in some suitable employment or business. That is the
8 determination that we must make - his physical capacity.
9 But, as that physical capacity changes during the conval-
10 escence, we have found that by setting it at 50 per cent of
11 compensation, that is, 50 per cent of total, ^{it} seems to pro-
12 vide a level which covers the whole thing.

13 MR. ESTEY: Which is $37\frac{1}{2}$ per cent of his
14 wages unless it is over 6,000.

15 MR. POOLE: Yes.

16 MR. ESTEY: All right. Well, now, I do not
17 wish to give the impression that I dispute your policy in
18 the interpretation of the Act, but I want to find out
19 certainly what it is in the narrow situation prescribed by
20 the Act. The second quantity in the statute is the average
21 amount that he is physically capable of earning, which
22 means the Board has to determine how much he is capable
23 of earning at any given time during this temporary dis-
24 ability. What you are saying is that the Board policy is
25 that that is not a practical way to do it and you get about
26 the same result by giving him $37\frac{1}{2}$ per cent of his wages
27 so long as he is in that state.

28 MR. POOLE: Yes.

29 MR. ESTEY: It says the difference between
30 the average weekly earnings: What period of time does



1 the Board use for that average computation?

2 MR. POOLE: On return to work?

3 MR. ESTEY: No, in the third line, and I
4 think it is in your brief, you have a copy of the section
5 and in the third line it gives the first quantity, the
6 average weekly earnings of the workman before the accident
7 and the second quantity is the average after. Now, what
8 base do you use in section 41 for computing that average?

9 MR. POOLE: The average in the first place
10 is the same basis as is used for the total disability
11 payments.

12 MR. ESTEY: You go back to your 12 month
13 period?

14 MR. POOLE: Actually, in practice, it has
15 been reduced to the last four weeks.

16 MR. ESTEY: Is that done where it does
17 not hurt the workman or is it done without regard to whether
18 his pay has gone up or down prior to the four weeks?

19 MR. POOLE: Actually, it is done and,
20 certainly there is the right to appeal, and this has been
21 done, in which the actual 12 months has been used.

22 MR. ESTEY: But as an administrative
23 shortcut, you use four weeks and if somebody thinks he has
24 been the victim of an injustice, he will appeal?

25 MR. POOLE: That is right, sir.

26 THE COMMISSIONER: The Act states 12
27 months.

28 MR. POOLE: Yes, sir.

29 THE COMMISSIONER: But the Board has the
30 power to use some other measure?



1 MR. POOLE: There is in other sections
2 of the Act, quite a great deal of latitude.

3 MR. ESTEY: You are referring to section
4 44 (1) which says:

5 "Average earnings shall be computed in such
6 a manner as is best calculated to give the
7 rate per week or month at which time the
8 workman was remunerated...."

9 MR. POOLE: That is right.

10 MR. ESTEY: I was going to ask you when you
11 use that and also when you use Section 44 (2) which covers
12 the short employment period and, in fact, it says:

13 "Where, owing to shortness of the time
14 during which the workman was in the
15 employment of his employer.....regard may
16 be had to the average weekly or monthly
17 amount that during the 12 months prior
18 to the accident was being earned by a
19 person in the same grade....."

20 Now, I take it that is used where there
21 is no prior record.

22 MR. POOLE: If a man is injured on the
23 first day of employment.

24 THE COMMISSIONER: What are the sections?

25 MR. POOLE: Section 44, sir.

26 MR. ESTEY: This does not allow you to take
27 in more than one employer, does it?

28 MR. POOLE: If we have a situation where
29 a man is injured on the first day of employment, we will
30



1 request a statement from the employer of the average earnings
2 of a man employed in a similar grade of work.

3 MR. ESTEY: And if he has no such people,
4 then you find it out in the community where the man was hurt.

5 MR. POOLE: We have to find another way of
6 doing it.

7 MR. ESTEY: Then section 44 goes on to cover
8 a number of situations, and one I wanted to ask you about
9 is the case where a man is working for two employers; that
10 is, he is either moonlighting or it is the kind of work that
11 allows him to work for two employers at separate times of
12 the day but in concurrent periods. If he is hurt with one,
13 then section 43 says the average earnings shall be those
14 he was earning in the employ of the man for whom he was
15 working at the time of the accident.

16 MR. POOLE: That is right.

17 MR. ESTEY: So, in that case, the man is not
18 compensated for the loss of the second employer's payments
19 to him.

20 MR. POOLE: That is right, but if we took
21 the situation that he perhaps had a full time job at one
22 place and he had a part time job at another place, we would
23 base the earnings, if he was injured in the second employment
24 on what a man would earn doing a full time job, not as part
25 time.

26 MR. ESTEY: But to take a basic case where
27 he has two different employers and he works part of the day
28 for one and part of the day for the other and he is hurt
29 for one, he loses without compensation, income from the
30 second.



1 MR. POOLE: That is right.

2 MR. ESTEY: I suppose to the extent that a
3 man can only have one medical treatment, wherever he is
4 hurt, that there is an over-contribution in respect of that
5 man by the two employers to the Board.

6 MR. POOLE: If they were both under the
7 Act they would only be paying on those earnings that the
8 man would have in their employment.

9 MR. ESTEY: That is right, and therefore,
10 since the man is only being compensated for the loss of
11 one, then somebody is not having to pay for the loss which
12 he is suffering, and for which the employer has paid his
13 insurance. Therefore, at least to the extent of the medical
14 loss, I take it there is an overpayment on that man, result-
15 ing from section 44 (3) which says you cannot take it into
16 account.

17 MR. POOLE: Yes, I think that is a possib-
18 ility.

19 MR. ESTEY: Has there been any urging by
20 anybody to the Board, down through the years in your ad-
21 ministration of the Act that there should be in the averag-
22 ing, that it should take into account all the revenue this
23 man earned from whatever source or from more than one
24 employer? You see, section 44 (4) is pretty clear that
25 it is narrowing it down to that one employer.

26 MR. POOLE: That is true.

27 MR. ESTEY: In the construction industry,
28 for example, where the worker does not always stay with
29 the company, as a man might with Eatons, but he follows
30 contracts, and one day contractor A has a job on the subway



1 and the next day his work is finished and another contractor
2 is the low bidder and he needs this man's specialty so he
3 hires him. But if something happens to that man, say on
4 the first day, then you have to go through a more elaborate
5 study under section 44 than would be the case under
6 section 41 if he could simply average his income on that
7 job.

8 MR. POOLE: Actually, I think you could
9 use the same situation. It may be a little more elaborate.

10 MR. ESTEY: You get an adequate result.

11 MR. POOLE: Yes, because you get the same
12 grade of work which would be paid for in the place where
13 he was injured.

14 MR. ESTEY: Can you tell me this, Mr. Poole:
15 We had a case in great detail about the injured heel and
16 the difficulties that arise -- I think it was the man who
17 went to work for the lumber yard -- and he got hurt on the
18 first day of a new job because there is a strike on his
19 other job and his pay is half as high and he is not in his
20 specialty but the compensation for his temporary total
21 disability is 75 per cent of what he is then earning.

22 MR. POOLE: That is right.

23 MR. ESTEY: Now, section 44 (6) seems to
24 contemplate that kind of situation and I am wondering if
25 the Board has any policy as to when it invokes the policy
26 of the Act which states where in any case it seems more
27 equitable, the Board may award compensation having regard
28 to the earnings of the workman at the time of the accident.
29 Do you read that as meaning at the instant of the accident?

30 MR. POOLE: Yes -- when the accident occurred.



1 MR. ESTEY: When do you invoke that section?

2 MR. POOLE: Actually, it is invoked more in
3 the situation where the man has a broken employment with
4 the same employer. He might be on one job for them, paying
5 one rate at one time and another rate at another time, and
6 it is broken up and we will try and find an equitable rate.
7 He is still in the employ of that employer.

8 MR. ESTEY: When you average his income, do
9 you average it using his fluctuating hourly rate or do you
10 take his gross income and divide it by a presumed standard
11 of 40 hours a week?

12 MR. POOLE: It is on a gross income on a
13 daily basis, so much per day.

14 MR. ESTEY: So if in 12 months the man did
15 not work for 6 months because he is in construction or
16 seasonal work and it was the winter time, how would you
17 average his earnings for the 12 months?

18 MR. POOLE: As a general rule, and taking
19 this indication of 4 weeks for temporary disability, he
20 would be paid on the basis of what he was earning for the
21 four weeks. For a permanent disability it would be something
22 different.

23 MR. ESTEY: I am not clear on that basic
24 problem. On the 12 months past, would the man's 12 month
25 average include the fact that he was not working for 6 of
26 those months and therefore his average would be half of
27 what it would have been, had he worked the full time, or
28 do you use his rate?

29 MR. POOLE: His rate, in most cases for
30 temporary disability.



1 THE COMMISSIONER: But temporary total
2 disability or total disability, the Act states that it
3 shall be on the basis of 12 months, doesn't it?

4 MR. POOLE: Right.

5 THE COMMISSIONER: There is no leeway given
6 to the Board to accept the basis of 4 weeks, is there?
7 In the construction industry they submit a brief in which
8 they indicate that the Board has been following this four
9 week thing and, in their case, where people are maybe not
10 employed steadily, it is working an injustice, using 4
11 weeks instead of 12 months. A substantial number of injuries
12 appear to be reported, naturally, in the time he is on the
13 previous 4 weeks, at the time when he is working, at any
14 rate.

15 MR. POOLE: This policy of determining and
16 using the 4 weeks developed actually during wartime at
17 which time it was found very difficulty by the employers
18 to provide earnings over the 12 month period and with the
19 vast increase in employment, really, we had so many com-
20 plaints in respect of the amount of work that we were creat-
21 ing to provide and have to go back all through the payrolls
22 that this was developed, using the basis of section - (1)
23 of 41, that the average earnings could be computed in such
24 a manner as best calculated to give the rate in order to
25 try and ease this situation and not create the amount of
26 work that was necessary, always keeping in mind that the
27 12 months could be used if it was of a beneficial situation,
28 historically, the situation.

29 MR. ESTEY: I will try to get at it another
30 way. Under section 42 of the Act "where permanent disability



1 results, then the impairment of earning capacity shall be
2 estimated from the nature and degree of the injury. When
3 that is done the compensation shall be weekly, et cetera,
4 of a sum proportionate to such impairment, not exceeding
5 in any case, the like proportion of 75 per cent of his
6 average weekly earnings, ascertained as in the case of
7 temporary total disability." We have permanent disability,
8 both total and partial, covered in section 42 and referring
9 back for computation, to the temporary total disability -
10 right?

11 MR. POOLE: Yes.

12 MR. ESTEY: What I am not clear upon is
13 a very simple basic element of this program, and that is,
14 when you calculate the man's entitlement, to use an example
15 in simplification, that it is a case of permanent total
16 disability. When you calculate his entitlement under
17 section 42 and section 40, section 44, as the Board may
18 be advised, what do you do with the workman who has not been
19 employed throughout the 12 month period? How do you say
20 what his average weekly earnings were? Do you take his
21 rate and find his average rate and pay him on that basis,
22 or do you take his gross income and divide it by 50 too?
23 Or what does the Board do?

24 MR. KERR: In this one, Mr. Estey, you are
25 concerned with how we establish bases for permanent dis-
26 ability award?

27 MR. ESTEY: Yes.

28 MR. KERR: The Act says we have regard for
29 the 12 months prior to the accident and the earnings during
30 this period. If the man has been employed in actual practice



1 for three months or more in that particular job, we would
2 take that period of his earnings assuming that he was working
3 for that employer for more than three months during the 12
4 month period. Then you say, "Well, what happened to the
5 other period?" He may have been working for another
6 employer during that period but we have regard for his
7 earnings in the type of work that he was employed in at the
8 time of his accident, so we confine his earnings to be
9 grade of work that he was performing for his employer when
10 he was injured.

11 MR. ESTEY: At the time?

12 MR. KERR: At the time of his accident.

13 MR. ESTEY: You would have used your powers
14 of 44 (6) to do that. Subsection (6) says where proper
15 and helpful, you will look at the rate at the time of the
16 accident?

17 MR. KERR: Yes, sir. We try to establish
18 what would be a fair earnings basis for that man, consider-
19 ing his grade of work.

20 MR. ESTEY: What concerns me, though, is
21 not that case but let us take a carpenter and he is working
22 in construction and he doesn't work from the 1st of December
23 until the 1st of March and this is a regular thing in his
24 life because it is winter. Now, he is hurt and the 12
25 month period has to go back through that dead period.

26 MR. KERR: Through the period of unemploy-
27 ment.

28 MR. ESTEY: That is right. Now, what does
29 the Board do in the averaging, when that happens?

30 MR. KERR: Generally, if he has lost time



1 due to the lack of work, this does count against the man in
2 calculating his earnings.

3 MR. ESTEY: That is what I want to get at.
4 So that his compensation for being hurt in the month of
5 July when he is working as a carpenter, getting \$3 or \$4
6 an hour, his disability, as a result of that injury, is
7 downgraded because he was unemployed during the previous
8 winter, is that correct?

9 MR. KERR: That is one way of putting it,
10 yes. However, we have to be careful that in the end result
11 we do establish what is a fair and equitable basis for his
12 permanent disability award. I know that is a big statement
13 to make but I am trying to indicate that we have to estab-
14 lish a fair wage basis for him.

15 MR. ESTEY: Well, my questions are not
16 designed to be critical. I am trying to find what the
17 basis is. Has there been any pressure on the Board, having
18 in mind such seasonal problems as our climate thrusts upon
19 injury, has there been any pressure to equate the position
20 of the carpenter to that of the inside worker so that he is
21 not hurt or does not suffer financial loss because his
22 pension is computed with reference to the period when he
23 was unemployed? Is there any policy determined on that
24 by the Board?

25 MR. KERR: Not to my knowledge. Perhaps
26 Mr. Poole may know of something.

27 MR. ESTEY: I am wondering if that might
28 not be the case where 44 (6) was intended to be invoked
29 because that is one way the Board could say, "We will look
30 at the rate and not the gross", because that is really



1 all we are talking about, isn't it?

2 MR. POOLE: However, I think in the example
3 that you are making, a man who is a seasonal worker and does
4 not work elsewhere during the off season, has a total income
5 of only that which he earns during that time. Now, your
6 man who works steadily has a total income too and I think
7 it is the total income that we are interested in, in a
8 permanent disability situation.

9 MR. ESTEY: And, of course, his contribution
10 to the fund is based upon his total income, not his theor-
11 etical income. That is the other side of the coin. And
12 there is another thing on the other side of the coin, that
13 if you can arrange it and get hurt during the idle three
14 months, you will have a better income than if you stayed
15 healthy for 12 months. I suppose you have to take in all
16 the possibilities.

17 MR. POOLE: That is right.

18 MR. ESTEY: I just wanted to know what the
19 basis was of invoking section 44. Now, do you have any
20 regulations in the Board which a stranger could read so as
21 to enable you to determine when you use the four week base
22 and when you use the statutory base for computing average
23 earnings?

24 MR. POOLE: Not as regulations to the Act.

25 MR. ESTEY: Do you have any kind of a
26 policy directive which goes out to industry or a Board
27 order of some kind?

28 MR. POOLE: No, there has never been any
29 but they are advised, industry is advised at seminars,
30 labour is advised in seminars and so on, and we try and



1 provide the information. Our booklets also indicate this.
2 I think Mr. Kerr has one in his hand at the moment.

3 MR. ESTEY: We appreciate the administration
4 section, section 41 is a very tricky thing, but you have
5 got 9 adjudication teams which you told us about, actually
6 10, but 9 dealing with this kind of thing. Does the Board
7 have some kind of a standard operating order?

8 MR. POOLE: A procedure manual.

9 MR. ESTEY: In that procedure manual
10 would it have an interpretation of section 41 and section
11 44 to apply when the man came to a disability claim under
12 42?

13 MR. POOLE: That is right.

14 MR. ESTEY: And for that type of man, you
15 would have this type of interpretation laid out on how
16 you average?

17 MR. POOLE: That is right. In the informa-
18 tion booklet G, which is sent out, what earnings are used
19 for compensation payments?- actual earnings, not the rate
20 of wages are used as the basis for compensation payments.
21 All allowances such as board, supplies, tips or extra pay
22 received, are included except vacation pay credits. The
23 general rule is to take the average earnings for the four
24 weeks immediately preceding the accident when figuring
25 compensation for temporary disability. When a pension
26 for a permanent disability is figured, average earnings
27 for the 12 months preceding the accident are used. Time
28 lost by sickness or reasonable holidays is not counted
29 against the workman but seasonal close-down or slackness
30 of business is. The aim is always to determine as closely



1 as possible the actual weekly earnings, as fairly as possible.

2 THE COMMISSIONER: And do you follow that,
3 Mr. Poole?

4 MR. POOLE: We follow that quite closely,
5 sir.

6 MR. ESTEY: You have read from a booklet
7 which is entitled what?

8 MR. POOLE: It is called our Circular G.

9 MR. KERR: It is already submitted as an
10 Exhibit, Mr. Estey.

11 MR. ESTEY: I thought I had seen that.

12 THE COMMISSIONER: Then, am I correct in
13 this: the submission that was made in cases of permanent
14 disability or temporary permanent disability, a submission
15 that was made, I think by the Construction Association, is
16 incorrect when they state that you are doing it on a four
17 week basis instead of on a 12 month basis?

18 MR. POOLE: Insofar as permanent disability
19 is concerned, yes.

20 THE COMMISSIONER: But when you take it on
21 a 12 month basis it doesn't necessarily mean you average
22 his total earnings for the 12 months.

23 MR. POOLE: There are allowances for certain
24 situations such as illness.

25 THE COMMISSIONER: But other than illness,
26 I may be repeating what you have already stated, but I want
27 to be sure: For instance, if he is off for three months
28 his total earnings are in the amount that he actually got
29 and it is on that that his compensation is averaged?

30 MR. POOLE: That is right, sir.



1 THE COMMISSIONER: As long as the three
2 months he was off was not due to illness or something along
3 that line?

4 MR. POOLE: Yes, something of that nature.

5 THE COMMISSIONER: Thank you, Mr. Estey.

6 To change the subject to this question of
7 suitable work, as I understand your succinct statement at
8 the top of page 2 on this topic, which is a very difficult
9 topic to discuss, from my viewpoint anyway, I understand
10 you to say that if a man suffers what turns out to be a
11 permanent, partial disability, a permanent partial disability,
12 that his treatment by the Board is precisely the same whether
13 he temporarily is totally disabled or, on the other hand,
14 continues to work as a partial disability workman.

15 MR. POOLE: That is right.

16 MR. ESTEY: He ultimately gets the same
17 partial permanent disability award?

18 MR. POOLE: Oh, yes.

19 MR. ESTEY: But for the period after he is
20 injured and before he has reached the final plateau of
21 recovery, his compensation will vary according to whether
22 he worked or didn't work, obviously.

23 MR. POOLE: Yes.

24 MR. ESTEY: Because, at that time he is
25 a temporary total disability if he did not work and I take
26 it that if his employer paid him full wages, he would not
27 be a temporary partial disability case, while he did work?

28 MR. POOLE: That is right.

29 MR. ESTEY: But the third possibility is
30 that if the employer reduced his wages to match the light



1 work he is doing, he would be a temporary partial disability
2 case even though he continued to work?

3 MR. POOLE: Although I think there is one
4 point there that we should make clear, that if the employer
5 has the policy of paying total wages during a disability
6 period and takes a man back at work which is of a lighter
7 grade and where he is not of the value to the employer that
8 he was in his former occupation, that we will reimburse the
9 employer on the basis of the value of that man's work to him.

10 MR. ESTEY: So that everyone is in precisely
11 the same position, and I mean by that, the employer, the
12 employee and the Board, whether the man seeks light work
13 at a lesser remuneration and is compensated under section
14 41 for the difference, or whether the employer maintains
15 his full wages and the employer recovers the compensation
16 which the Board would otherwise pay to the man in the first
17 place. The fund has the same burden on it, the employee
18 gets the same return and the employer has the same expense.

19 MR. POOLE: That is right.

20 MR. ESTEY: That takes me to this, that in
21 the normal operations of the Board, how does the Board keep
22 track of the arrangement between the workman and the employer
23 during the period immediately following the accident if the
24 man is not hospitalized or put out of action so that the
25 Board has a complete medical story on him? Is there a
26 series of reports?

27 MR. POOLE: There is a series of reporting.
28 The employer has in his hands a form, which is a yellow
29 form that **probably** has been introduced.

30 MR. ESTEY: You mean form 6?



1 MR. POOLE: No, form 9 which is indicative
2 of his return to work, and at that time he indicates whether
3 he has returned to the same work or at reduced earnings or
4 just what the situation is.

5 MR. ESTEY: When does the employer fill out
6 form 9?

7 MR. POOLE: As soon as the man returns to
8 work.

9 MR. ESTEY: If he does not leave work?

10 MR. POOLE: He indicates that on form 7, the
11 original reporting form.

12 MR. ESTEY: And it is that basis on which
13 the Board goes forward in determining firstly the extent
14 of the partial disability, and secondly his financial loss.
15 I have form 9 now and the box in the upper left hand corner
16 says it is to be sent in when the injured worker returns,
17 or is able to return to work and at any other time requested.
18 "Able to return to work" would, I presume, be the situation
19 where the employer knows the doctor has said the man is
20 able to return to work?

21 MR. POOLE: That is right.

22 MR. ESTEY: Would the employer find that
23 out through the Board?

24 MR. POOLE: As a matter of fact, he quite
25 often find it out through the doctor and this is just
26 another avenue for us to have a reporting to us. If the
27 doctor has not reported to us and we receive that informa-
28 tion, then we can check into it.

29 MR. ESTEY: I see this form asks the
30 employer for the date the employer considers the man was



1 able to go back to work and then you say, "on what do you
2 base your opinion", so that you have a second source of
3 information on this man. But, how, in the ordinary routine,
4 would the employer find out from the doctor when the man is
5 able to return to work?

6 MR. POOLE: I think you will find many
7 employers follow this very closely. There are some who do
8 not but there are many who do.

9 MR. ESTEY: Does the doctor tell the
10 employer in the ordinary course if he calls him on the phone
11 when his patient is going to be able to go back to work?

12 MR. POOLE: I think it is a matter of
13 discretion - it is a matter of the judgement of the doctor.
14 We don't enter into that.

15 MR. ESTEY: I asked you that because of this
16 delicacy we hear so much about of the patient-doctor rela-
17 tionship. I take it your form 42 perhaps fills in some of
18 those blind spots where you send interim reports to the
19 employer. We had a submission that these should not be on
20 a summary basis but should be more complete. I take it you
21 do not send the doctor's report back to the employer.

22 MR. POOLE: Oh, no, sir.

23 MR. ESTEY: Does the fact that the employer
24 discharges the workman when he is unable to perform any
25 duties for which the employer wishes to engage him - does
26 that have any bearing on the Compensation Board's treatment
27 of the situation?

28 MR. POOLE: We have no control over employ-
29 ment, let us put it that way.

30 MR. ESTEY: That is clear. The Act is no



1 prohibition against discharging him, no duty on the employer
2 to continue to keep him on, no power in the Board to direct
3 the employer to keep him on?

4 MR. POOLE: That is right.

5 MR. ESTEY: But does it have any effect on
6 the amount of the disability or any other condition dependant
7 upon the man's treatment when he is discharged?

8 MR. POOLE: No, as far as we are concerned,
9 we are dealing with a disablement and we deal with it on the
10 grounds of the medical evidence which we receive.

11 MR. ESTEY: And when his employment is
12 terminated, it has no bearing, of course, on his disability
13 or the length of time that he is paid?

14 MR. POOLE: That is right.

15 MR. ESTEY: On these temporary disabilities,
16 do you determine the length of payment by reference wholly
17 to the medical report?

18 MR. POOLE: It is based on the medical
19 evidence.

20 MR. ESTEY: In the ordinary administration
21 of the Act, is the workman required to go back to the doctor
22 frequently on a temporary disability to determine this, or
23 how does the Board follow it?

24 MR. POOLE: It depends upon the nature of
25 the disablement which he has suffered. If it is a fracture
26 that we know is going to go on for quite a substantial
27 period of time, there may be an extension of compensation
28 for a fair length of time without the necessity of reports,
29 but it is in the judgement of those handling the claims,
30 the requesting of reports, and the report forms are sent to



1 the man to take to his doctor to be completed.

2 MR. ESTEY: I suppose the Board's ultimate
3 weapon on this is to discontinue payments if they do not
4 have any information - if there is no cooperation in report-
5 ing, then you discontinue the payments?

6 MR. POOLE: If we have not the evidence,
7 we cannot make payments.

8 THE COMMISSIONER: I suppose that what you
9 have in your claims department is a memo system that brings
10 certain matters to your attention day-by-day, and if this
11 is marked for a call in six weeks, it comes up at that time
12 and a letter goes out?

13 MR. POOLE: That is correct, sir.

14 MR. ESTEY: But where the injured workman
15 on temporary disability has some unusual skill that makes
16 it academic to tell him to go and find light duty, some
17 electronics worker who spends years soldering tubes together
18 and who is told for six weeks he can sweep floors, is not
19 likely to do it, so you have this modified situation where
20 as I understand your brief, you then award the man, and I
21 suppose more or less automatically, a six weeks temporary
22 disability allowance.

23 MR. POOLE: It has to be fairly carefully
24 looked at on the basis of, is he in the type of employment
25 and is his skill such that he cannot really go out. I
26 think an example of this would be the railroad engineer
27 who gets to a point of recovery where he is still not able
28 to operate an engine but he can't get back with his employer
29 in any other job, except probably if they did happen to
30 have an opening as a crossing watchman or something of a



1 temporary nature like that, but these are usually reserved
2 for permanent disability cases.

3 MR. ESTEY: That is an instance where you
4 would do, as you say at the top of page 3:

5 "The order ruled that temporary total
6 disability payment could be continued
7 for a short period not to exceed six
8 weeks."

9 MR. POOLE: That is right.

10 MR. ESTEY: That is the kind of situation
11 where the Board does that?

12 MR. POOLE: That is right.

13 MR. ESTEY: Immediately below that you say
14 this order is applied to situations where it is not reasonable
15 to expect the man, in view of his skill -- that is your
16 locomotive example -- but the next one bothers me because
17 you then say, secondly, it is applied where suitable work
18 is not available to the injured workman in his community.
19 So, I take it that is a case where availability of work
20 is a factor in determining the disability allowance.

21 MR. POOLE: It comes into the very small
22 community, a one industry town situation, in which there
23 is just no possibility of anything.

24 MR. ESTEY: In Toronto, for example, if
25 the man is capable of performing light work which the Board
26 thinks should produce \$1.25 an hour, then he gets no dis-
27 ability allowance when he reaches that plateau, except
28 measured under section 41, the difference between what he
29 did get and what he theoretically could get if he went to
30 work in the light field.



1 MR. POOLE: Generally speaking, yes.

2 MR. ESTEY: So that the metropolitan worker
3 does not get the advantage of that part of your Board policy
4 order.

5 MR. POOLE: He gets the advantage of the
6 first section.

7 MR. ESTEY: He gets the first one but not
8 the second.

9 MR. POOLE: Not completely on the second.

10 MR. ESTEY: We have heard a lot about re-
11 training and the Board is asked to do this-and-that to
12 retrain the man after he has been hurt. You mentioned
13 vocational rehabilitation assistance: Perhaps this is not
14 a time to get into a lengthy description of it, but what is
15 that service?

16 MR. POOLE: That service, as you are refer-
17 ring it to this particular situation, is a placement service.

18 MR. ESTEY: It is a placement service?

19 MR. POOLE: Yes, because this is of a
20 temporary nature.

21 MR. ESTEY: Do you operate that service in
22 conjunction with the Unemployment Insurance Commission's
23 National Employment Office?

24 MR. POOLE: Generally speaking we try to
25 work it with our own people as well, but we do use that.

26 MR. ESTEY: I take it you operate your
27 policies under this Act and administer the Act without
28 regard to the impact this may or may not have on unemploy-
29 ment insurance benefits under the Federal Statute?

30 MR. POOLE: That is right.



1 MR. ESTEY: You operate in a wholly separate
2 field and you have very little, I take it, liaison with them
3 except possibly in the field of light duty and in seeking
4 employment for them.

5 MR. POOLE: That is right.

6 MR. ESTEY: There is no interlocking of
7 the benefits under the two statutes, in fact and in practice?

8 MR. POOLE: No, sir.

9 MR. ESTEY: I take it, finally with regard
10 to federal legislation, that your Board has no projection
11 of the impact on disability benefits at large, of the Canada
12 Pension Plan when it is fully implemented, in its four year
13 step, as I vaguely remember that statute, its four year
14 programs which it goes through as the funds build up, to
15 reach the prescribed plateaux of compensation and benefits
16 under the statute -- you have no projections on that?

17 MR. POOLE: We have not made a detailed
18 study on that at all.

19 MR. ESTEY: Have the Boards across Canada
20 had any discussions, or have they reached any position on
21 the benefits to be gained from interlocking the Workmen's
22 Compensation programs with the Canada Pension Plan?

23 MR. POOLE: I think the situation largely
24 with the Boards across Canada is, yes, it has been a matter
25 of some concern, shall we say; but since it is Provincial
26 Legislation that each Board is working under and the Canada
27 Pension Plan is Federal Legislation, the Boards generally
28 have felt it is a matter for their individual governments
29 to take up with the Federal Government.

30 MR. ESTEY: And not for the Boards?



1 MR. POOLE: Not for the Boards .

2 MR. ESTEY: Thank you, Mr. Poole.

3 THE COMMISSIONER: I don't know whether
4 this is the place to consider it or not, but in the case
5 of a temporary disability and the man eventually returns,
6 I presume, to his work and at a subsequent time it is found
7 that he has a permanent disability and it is attributable
8 to this accident for which he received temporary disability
9 compensation, even though it is many years later and he is
10 on a much higher salary, it is the practice of the Board,
11 I understand, or required by the Act, to compensate him on
12 the basis of the salary that he was earning at the time of
13 the original accident?

14 MR. POOLE: That is correct, sir, for
15 permanent disability.

16 THE COMMISSIONER: That section is what?
17 Do you know?

18 MR. POOLE: 42, sir.

19 THE COMMISSIONER: During the previous 12
20 months. And the Board interprets that in section 42, it
21 literally follows the wording in section 40 where it is to
22 be done on the basis of earnings during the previous twelve
23 months.

24 MR. POOLE: That is right, sir.

25 THE COMMISSIONER: Which can refer to
26 nothing else than the previous twelve months to the original
27 accident.

28 MR. POOLE: I think so.

29 THE COMMISSIONER: There have been a lot
30 of representations from workmen who feel that they are not



1 getting well treated because when this happens they are on
2 a compensable basis of earnings which were very different
3 to what they are today. I simply wanted to make sure that
4 I understood the situation, but that is the way you inter-
5 pret the Act?

6 MR. POOLE: That is correct, sir.

7 MR. ESTEY: Nothing further. Thank you
8 very much, Mr. Poole.

9 Before we leave benefit payments, Mr. Com-
10 missioner, we have with us this morning, Mr. Somerville
11 of the Automotive Transport Association who have, as you
12 know, filed a rather extensive brief dealing with a number
13 of extensive topics.

14 THE COMMISSIONER: Perhaps, Mr. Somerville,
15 we will just adjourn for a few minutes and then you wont
16 be interrupted.

17 --- Short recess.
18

19 MR. SOMERVILLE: Mr. Commissioner, we have
20 been unable to be present at all of the Hearings that have
21 taken place so far and I would appreciate an opportunity,
22 without reading our brief in its entirety, to perhaps refer
23 to other germane portions of the brief.

24 THE COMMISSIONER: You are the Automotive
25 Transport Association of Ontario?

26 MR. SOMERVILLE: Yes, T.J. Somerville.

27 THE COMMISSIONER: Well, you can read your
28 brief or give it to us in any way you see fit.

29 MR. SOMERVILLE: If I may, Mr. Commissioner,
30 without reading in detail the introduction or the general



1 comments which go to page 5 in the brief, if I could refer,
2 first of all -

3 THE COMMISSIONER: You are representing an
4 association engaged in the inter-city truck transportation
5 business, chiefly?

6 MR. SOMERVILLE: That is so.

7 THE COMMISSIONER: Embracing not only those
8 operating for hire inter-city transportation services but
9 also firms whose trucking operations are an adjunct to
10 other lines of endeavour.

11 MR. SOMERVILLE: Yes, Mr. Commissioner.

12 If I may proceed then, with page 3 in the
13 general comments, under paragraph 2:

14 2. Workmen's Compensation was designed as and
15 should remain a means of preventing hardship resulting from
16 accidents in the course of employment. The growth of Social
17 Insurance programs and easily obtainable accident insurance
18 has eliminated some of the potential hardships which led
19 to the passage of the original Workmen's Compensation Act.
20 Many employers contribute substantially to hospitalization
21 and medical plans in addition to meeting their liabilities
22 under the Workmen's Compensation Act; some employees are
23 covered by policies of insurance which add to the compensa-
24 tion for disability provisions of the Workmen's Compensation
25 Act.

26 Mr. Commissioner, if I may add in relation
27 to one of the statements made there, we had occasion to
28 conduct a survey of some 52 of the Ontario inter-city truck
29 companies, who we considered to be representative in this
30 field, with a view to determining how many did participate



1 and did contribute to Ontario Hospital plans and we found
2 that as a result of this survey - this is not in the brief
3 but this figure has become available since - that of the 52
4 Ontario companies which we canvassed and which we feel are
5 representative, some 15 of those companies pay the Ontario
6 Hospital premiums - I am sorry, share in the payment of those
7 premiums and a further 11 pay 100 per cent of Ontario Hospital
8 insurance premiums, so that out of the 52, 26 are involved
9 in some way in the payment of Ontario Hospital insurance
10 premiums.

11 THE COMMISSIONER: Ontario Hospital insurance
12 doesn't cover compensation cases.

13 MR. SOMERVILLE: That is so, Mr. Commissioner
14 and I will be making a submission with respect to that later
15 on.

16 If I may turn to page 7 of our brief, dealing
17 with the question of benefits under section 2.

18 Section 40 of the Workmen's Compensation Act
19 provides as follows:

20 "Where temporary total disability results
21 from the injury, the compensation shall
22 be a weekly payment of 75 per cent of the
23 workman's average weekly earnings during
24 the previous twelve months if he has been
25 so long employed, but if not then for any
26 less period which he has been in the employ
27 of the employer, and is payable so long
28 as the disability lasts."

29 Other sections of the Act refer to a twelve
30 month period in computing the average weekly earnings upon



1 which disability compensation is calculated. For reasons
2 of convenience, the practice has arisen of basing computations
3 of average weekly earnings on the four pay periods immediat-
4 ely previous to the accident. Thus, increased overtime
5 payments and wage increases have distorted the quantum of
6 compensation paid for temporary total disability. It is
7 respectfully submitted that this practice should cease,
8 and that the provisions of Section 40 be adhered to in
9 computing such payments.

10 THE COMMISSIONER: What is there in section
11 40? This refers to temporary total disability.

12 MR. SOMERVILLE: Yes, Mr. Commissioner.

13 THE COMMISSIONER: Not temporary partial
14 disability.

15 MR. SOMERVILLE: I am referring here, only
16 to payment for total temporary disability.

17 THE COMMISSIONER: You are quite right. I
18 understood from Mr. Poole that, in cases of temporary total
19 disability they did base it on the 12 month period. Am I
20 wrong in that, Mr. Kerr?

21 MR. KERR: The 12 month period, sir, is
22 used for permanent disability; the 4 week period is used
23 for temporary disability employees.

24 THE COMMISSIONER: I understood him to
25 say that both for permanent and temporary total disability
26 they used the 12 months. But you say that is not correct?

27 MR. KERR: It is a little confusing with
28 these terms, sir, because of temporary total, but temporary
29 disability can be both total or partial but as long as it
30 is of a temporary nature, sir, we use the 4 weeks. If it



1 is of a permanent nature, which may be permanent total or
2 permanent partial, we use the 12 months. Is that clarified?

3 THE COMMISSIONER: I asked him a question
4 and I misunderstood the answer.

5 MR. ESTEY: I thought he gave the same
6 answer as the Commissioner with reference to saying when
7 they used subsection (6) of Section 44. I may be wrong.

8 MR. KERR: This is our authority for the
9 4 weeks, sir, subsection (6) of 44.

10 MR. ESTEY: That is right.

11 THE COMMISSIONER: The provisions of the
12 Act, then, are in conflict in respect of those two. You
13 say 44 (6) authorizes that?

14 MR. KERR: We have been using that as our
15 authority, sir, for basing compensation on the 4 weeks prior
16 to the accident. 44 (6):

17 "Where in any case it seems more
18 equitable, the Board may award compensation
19 having regard to the earnings of the workman
20 at the time of the accident."

21 THE COMMISSIONER: Well, that refers to an
22 exception to section 40. I am not sure that it authorizes
23 the adoption of that as every case being an exception.
24 However, I understand it now.

25 MR. SOMERVILLE: Carrying on, then, with:

26 B. PROPOSALS TO REDUCE AND PREVENT ABUSES OF WORKMEN'S
27 COMPENSATION LEGISLATION

28 1. In recent years, a number of insurance
29 companies have made available to the public policies which
30 provide for substantial benefits for loss in earnings



1 | occasioned by accident. The effect of such insurance may
2 | result in a form of "double indemnity" in which a workman
3 | who is able to establish disability may earn more by remain-
4 | ing idle than by returning to work. Such a situation is an
5 | open invitation to malingering. If the purpose of the
6 | Workmen's Compensation Act is to avoid hardship and not to
7 | encourage malingering, then this situation ought not to be
8 | permitted to continue. It is, therefore, respectfully
9 | submitted that disability payments, this is under the Work-
10 | men's Compensation Act, should be limited to the difference
11 | between insurance benefits and the statutory maxima provided
12 | for in the Workmen's Compensation Act.

13 | THE COMMISSIONER: In similar cases in the
14 | Courts, there have been a number of decisions in which they
15 | say allowances or payments for negligent action shall be
16 | without regard to any insurance that the man had. It is
17 | a situation which arises constantly in accident cases and
18 | this has been the decision of the Courts; in other words,
19 | they say a man is not going to be penalized for trying to
20 | put some protection or some coverage on and in these cases
21 | of partial disability, in any event, it would seem to be
22 | wise for him to have some coverage to take care of the
23 | discrepancy between the Board's award and what his earnings
24 | are.

25 | MR. SOMERVILLE: It is quite valid to say,
26 | Mr. Commissioner, that by and large a person ought not to
27 | be penalized because he has had the forethought to pay
28 | premiums and buy insurance to cover himself for eventualities
29 | such as these. What we are saying here is that perhaps
30 | there is an area of social policy to be explored where you



1 can say, "All right, in negligence cases no one is going to
2 be malingering as such as to the occurrence in those cases".
3 However, we do say --

4 THE COMMISSIONER: I can readily see that
5 it readily happens in accident cases too, where somebody
6 stays off work a lot longer than he would otherwise, because
7 he is going to get paid from two sources at the same time
8 for the same thing, but it may be a difficult thing to do
9 anything about.

10 MR. SOMERVILLE: 2. Frequently a workman
11 may sustain a partial disability which disqualifies him
12 from a certain line of employment but in no way impairs
13 his ability to perform other types of work. For example,
14 a truck driver may sustain a permanent disability which
15 renders him unable to perform heavy work and, subsequently,
16 finds himself fully competent and fully employed as a
17 despatcher. In such circumstances, the rationale and
18 justification for partial disability payments is terminated.
19 Such situations emphasize the need for continuing review
20 of partial disability payments (permanent disability pay-
21 ments should also be reviewed on a continuing basis.) In
22 such reviews, the Board ought to apply the principle that
23 fully employed persons earning as much or more as before
24 an accident do not require and are not entitled to partial
25 disability payments. This has reference, of course, to
26 section 42 and 42 (4) where the Board, if it deems it
27 more equitable, may take into account earnings, but there
28 are cases - I do not have one here - but there have been
29 examples of them of just exactly the fact situation which
30 has arisen here.



1 THE COMMISSIONER: There are two occasions
2 which arise. One is where a man has got some kind of a
3 partial disability, for instance, the loss of a limb or
4 something or other and he is able to go back on a despatcher's
5 job. Well, I don't suppose that you are seeking to discon-
6 tinue partial disability payments under those circumstances.
7 You are thinking more of the case of a man that was referred
8 to here, where he had a back injury and he went back to
9 work on full pay and three years later he was awarded partial
10 disability for the back injury. There is a provision in the
11 Act where, at the request of a workman, or by action of the
12 Board itself, these cases can be reviewed and it has been
13 suggested here that the answer might be to include in that
14 section the right of the employer to ask for a review. It
15 seems to me that what you suggest would put a pretty heavy
16 load on the Board to try and review all of these cases where
17 there has been a partial disability allowance or maybe a
18 partial permanent disability. I think it is only the cases
19 of abuse that you really want to cover and perhaps, while it
20 might not be conducive to employer-employee relations, it
21 might be a partial answer to the question which you raised.

22 MR. SOMERVILLE: We think about the situation,
23 one that comes to mind is a man who is employed as a truck
24 driver with a company, who is a back injury situation, and
25 the company took him back and trained him as a despatcher
26 because it was felt to be a truck driver would be dangerous
27 for him and he was trained at some expense and was granted
28 a 20 per cent partial disability pension and stayed until
29 his training period was over as a despatcher and then went
30 on somewhere else for quite a bit increased income over and



1 above what he had earned as a trucker and what he was being
2 paid as a despatcher by the original company and there is
3 a natural feeling that the result is inequitable to the
4 company involved when a situation like that occurs. I do
5 agree that the submission viewed by the original company,
6 initiated by the original company would go a long way towards
7 solving this problem.

8 3. The Workmen's Compensation Act, in Section
9 3 (1) (a) provides as follows:

10 "Where in any employment in which this
11 part applies, personal injury arising
12 out of and in the course of the employ-
13 ment is caused to a workman, his employer
14 is liable to provide or to pay compensation
15 in the manner and to the extent hereinafter
16 mentioned, except where the injury,

17 (a) does not disable the workman for
18 a period of at least three calendar
19 days from earning full wages at the
20 work at which he was employed;"

21 The use of the words, "from earning full
22 wages at the work at which he was employed" supports the
23 view, expressed above, that the purpose of the Act is to
24 prevent hardship from loss of earnings occasioned by
25 industrial accidents. This view is in conflict with the
26 use of calendar days rather than working days in deter-
27 mining entitlement to benefit. In our respectful submis-
28 sion, this Section of the Act should be amended to sub-
29 stitute the words "working days" for the words "calendar
30 days" to provide consistency and fairness in accordance



1 with the general principles of the Legislation. This amend-
2 ment would have the effect of reducing, in some small
3 measure, the costs to employers of Workmen's Compensation
4 and would prevent many claims that are picayune in nature.

5 4. Disability payments are presently to be
6 computed on the basis of 75 per cent of average weekly
7 earnings during the previous 12 months of employment, to
8 a maximum of \$6,000.00. Although in some circumstances
9 these amounts are excessive, no recommendation is made at
10 present that they be decreased. However, any attempt to
11 increase these maxima would invite abuses of the Legisla-
12 tion and affect not only the amount of each claim but also
13 the number of claims made against the fund.

14 THE COMMISSIONER: What abuses do you
15 contemplate, or how would it increase the number of claims?

16 MR. SOMERVILLE: If the benefit were
17 increased, if the payments went to more than 75 per cent,
18 then there would be a much greater temptation and much
19 greater motivation.

20 THE COMMISSIONER: It is the 75 per cent
21 you are talking about on the 6,000 maximum.

22 MR. SOMERVILLE: Yes.

23 THE COMMISSIONER: You are referring to
24 both?

25 MR. SOMERVILLE: Yes, that is right, Mr.
26 Commissioner.

27 THE COMMISSIONER: But it would not increase
28 the number of claims?

29 MR. SOMERVILLE: Except it would provide
30 motivation for more claims than there perhaps would be.



1 That, Mr. Commissioner, concludes the sub-
2 missions we make on the matters at issue before your
3 Commission today. As I have said, we have not been able
4 to be here throughout these Hearings and I understand that
5 our brief is before you and is in as part of the record so
6 that rather than, perhaps, reading it all through now,
7 perhaps I can conclude.

8 THE COMMISSIONER: We will have it read
9 in at relevant times; I assure you that will be done.

10 MR. ESTEY: Before you leave, Mr. Somerville,
11 can you tell us what the rate of compensation was in 1965
12 for rate 656 - the rate of assessment, I mean?

13 MR. SOMERVILLE: I think I can supply it
14 later on.

15 MR. MacDONALD: I think it is 2.75. It is
16 2.5 in 1966.

17 MR. GREAVES: It was two and a half in
18 1965 as well.

19 MR. ESTEY: Mr. Somerville, you discussed
20 the Ontario Hospital Services Commission and I made a note
21 that you were dealing, at that time, somewhere on page 5
22 and I see you have a proposal about reducing costs refer-
23 ring to hospitalization. I am not sure we have your
24 point on this reference to the Hospital Services Act. It
25 starts at the bottom of page 5 and goes on to page 6.

26 MR. SOMERVILLE: Where we say:

27 "At present some 99 per cent of the
28 people of Ontario are insured against
29 hospitalization ..." and that "...an
30 exception is made in relation to Workmen's



1 Compensation cases which are not covered."

2 MR. ESTEY: Yes.

3 MR. SOMERVILLE: If I understand your
4 question properly, you are saying how would you reduce costs
5 by having these paid by the hospital insurance to the
6 Commission and the answer is, of course that you would
7 not accept that the costs would be properly allocated. The
8 costs to the Board would be reduced and the costs, in our
9 submission would be properly allocated to the Ontario
10 Hospital Services Commission rather than to the Workmen's
11 Compensation Board.

12 THE COMMISSIONER: It would increase your
13 contribution to the Ontario Hospital Services Commission.

14 MR. SOMERVILLE: Yes.

15 THE COMMISSIONER: The only difference
16 being that the public would also contribute.

17 MR. SOMERVILLE: Yes, it would be shared
18 across the whole community.

19 MR. ESTEY: ... which spread the cost of
20 the medical side of this program, and I take it your
21 reference at the bottom of page 6 to O.M.S.I.P. is to the
22 same effect?

23 MR. SOMERVILLE: That is correct.

24 MR. ESTEY: You made a comment about one
25 of the temptations which the present statute, by its silence
26 on the subject, presents to a workman, namely, to insure
27 himself against the very thing he is covered for under the
28 Act, and I take it what you are proposing is either that
29 you subtract his entitlement from a private insurance plan
30 from what he gets from the Board, or that you follow the



1 Ontario Hospital Services Act and prohibit the sale of that
2 kind of insurance in Ontario, because that is what they do
3 under that Act, I think.

4 MR. SOMERVILLE: Yes, either of those
5 courses would meet the problem that we have raised here.

6 MR. ESTEY: Now, it would only meet it, I
7 take it, if the Workmen's Compensation Act is as com-
8 prehensive in its coverage of disability as O.H.S.A is
9 under hospitalization. For example, this temporary partial
10 disability problem we have where the man is capable of
11 of performing light duty, but none is available, he gets
12 nothing from the fund, but he would get it from a private
13 insurer, and that is the problem of prohibition, isn't it?

14 MR. SOMERVILLE: I can't say whether or
15 not he would receive it from his insurer, under the particu-
16 lar policy that he would have.

17 MR. ESTEY: But he could insure it to that
18 extent?

19 MR. SOMERVILLE: Yes.

20 MR. ESTEY: And if he did, he would be
21 plugging a gap which is not under the Act, so I take it
22 you are in agreement that if you are going to prohibit
23 the sale of that kind of insurance that the Act must be
24 co-extensive with the indemnity insurance.

25 MR. SOMERVILLE: I am really not prepared
26 to answer your question at this time.

27 THE COMMISSIONER: It seems to me, Mr.
28 Somerville, that the answer to this lies in the medical
29 assessment. I mean to say, if the time comes where the
30 doctors are to be depended upon to give an honest evaluation on



1 on the man's disability, then the time will come that they
2 will say that he is fit to go back to work, and if that is
3 the case, then the fact that he is entitled to compensation
4 for an injury suffered in the course of his work should
5 not have any effect on the fact that he chose, by his own
6 savings, to provide a means that would bring him in some
7 additional compensation in the event of that happening. It
8 is a personal matter for him. He could have put it in at
9 maybe five times his earnings, or something like that, if
10 some insurance company is prepared to issue him a policy
11 on that basis. If there were no compensation at all, why
12 that would be the situation. It is a very difficult matter
13 and as long as the medical profession can be depended upon
14 to give a fair evaluation, in view of the interpretation
15 of a similar situation in the Courts elsewhere it seems
16 to be a difficult thing to give effect to.

17 MR. SOMERVILLE: It is certainly realized
18 and it is with reluctance that we would propose anyone's
19 right to protect themselves by the payment of insurance
20 premiums should be interfered with. I think that is
21 really the issue, whether or not he should be permitted
22 to do that, and there are two sides to the coin; their
23 freedom on the one hand and on the other, social policy
24 in preventing abuses of Workmen's Compensation Legislation.
25 It is a policy decision as to which one ought to be
26 accepted. You have examples of both in the province.

27 THE COMMISSIONER: Of course, with fire
28 insurance there is a provision in most policies .

29 MR. ESTEY: You are not alone in this
30 proposal. We have had this before. The difficulty of



1 solution, in no way detracts from the merits of your
2 submission. But moving over to the three day period, I
3 take it what your association is saying, if you look at
4 page 10, the wording of section 3 (1) (a), you have used
5 exactly the same words but you have put them in a different
6 order as I will do now, and I take it you are saying that
7 the Board should then read the section as meaning days on
8 which he lost income. So, to get that result, I take it
9 you are saying -- and I am not disagreeing with you -- if
10 you read (a) as saying this: "does not disable the workman
11 from earning full wages at the work at which he was employed
12 for a period of at least three calendar days", and it would
13 at least be open to argument then, that unless he first
14 loses the wage, you don't count the days.

15 MR. SOMERVILLE: Yes.

16 MR. ESTEY: And, therefore, without problems
17 of getting the legislature to change "calendar" to "working"
18 you might do it that way and that is the way you'd like
19 them to read it.

20 MR. SOMERVILLE: Yes and we feel the earlier
21 part of the section supports that attitude whether or not
22 the language permits that interpretation.

23 MR. ESTEY: You are saying, also that the
24 whole philosophy of the statute supports that wording.

25 MR. SOMMERVILLE: Yes.

26 MR. ESTEY: I think that is all I want to
27 ask you. We will read in the rest of your brief, and have
28 had parts of it already. There is one question I want
29 to ask you about - Appeal Procedure: Where you find that
30 the Board has not reviewed a case and taken into account



1 some of the examples you gave us, one where the man, if you
2 applied section 43, would get less compensation. When
3 the Board has not reviewed the case to your satisfaction,
4 do your members ever appeal?

5 MR. SOMERVILLE: I don't know whether there
6 have been appeals under that particular situation. Of course,
7 our members have appealed.

8 MR. ESTEY: I said section 43. It should
9 be section 44 (4). Instead of going up, the payments may
10 go down. You might get a negative under 42 (1) and it
11 wouldn't help under 44 (4), and perhaps that is what you
12 are saying should result, but you don't know whether any-
13 body has ever appealed such a claim?

14 MR. SOMERVILLE: No, I don't.

15 MR. ESTEY: I see, thank you.

16 MR. SOMERVILLE: Thank you, Mr. Commissioner.

17 MR. ESTEY: I think, Mr. Commissioner, that
18 is all of the tag ends of the first item in our notice,
19 Benefit Payments. Different people have spoken to me, and
20 the Canadian Manufacturers' Association have some witnesses
21 who wish to come here at 2:00 o'clock. In the meantime,
22 I propose to read into the record, those parts which have
23 not been presented and which are not simply repetitive of
24 what has been presented.

25 THE COMMISSIONER: I think perhaps in the
26 event that you don't find it necessary to read it all from
27 some submissions, where the people have not appeared, that
28 you put it on the record that those submissions on that
29 point have been made but are repetitive.

30 MR. ESTEY: Very well, Mr. Commissioner.



1 MR. GUTHRIE: Mr. Commissioner, in the
2 brief of the Bell Telephone Company there is just a short
3 reference at page 6, and to paraphrase it, it is the second
4 paragraph on the page, and the recommendation is simply
5 that no change be made in the scale of benefit payments
6 which would be contrary to the basic intent of the Act.
7 That is phrased in very general terms and I don't think it
8 is of particular significance.

9 The Board of Trade deals with a number of
10 these matters beginning at page 5 of its brief and to a
11 large extent this is repetitive, but I will refer you to
12 the heading, "Scale of Compensation" on page 5 where it is
13 urged by the Board that the present scale of 75 per cent
14 of gross earning should not be increased and that any
15 increase could result in a situation where malingering
16 would be encouraged because there is no income tax payable
17 and no expenses incurred by the workman while he is off
18 his work.

19 Under Maximum Compensable Earnings, the
20 brief states that maximum compensable Earnings have
21 increased from \$2,000 a year to \$6,000 per year:

22 "We have no objection to these increases
23 and we favour further increases if the
24 value of the dollar continues to fall.
25 We are opposed, however, to a reduction
26 of the 12 month period previous to the
27 accident which, under Section 40 of the
28 Act, is required to be used in the
29 determination of the workman's average
30 weekly earnings. The 12 month period,



1 we submit, represents an equitable basis
2 to arrive at an average."
3 Then it goes on to increased benefits for
4 past injuries:

5 "From time to time benefits have been
6 increased and made applicable to the
7 ther recipients of benefit under the
8 Act. No objection is made to these
9 increases but their payments should
10 not be a charge against Ontario's
11 employers in business at the time
12 of the **increase**."

13 This is a point we have heard several times.

14 Over the page the brief, at that point,
15 concludes that the cost of such increases should be assessed
16 against the public generally and not just the employer
17 section of the public. I think that is all in the brief
18 that deals with these points.

19 Then the brief of the Canadian National
20 Railways et al, at page 6 following quite a lengthy review
21 of the historical background of the Act as referred to in
22 the report of Mr. Justice Roach and Mr. Justice Tysoe.
23 The Railways make this submission at the middle of page 6:

24 "It is our submission that the principles
25 of the Act are still as valid as when
26 the Act was first brought into being and
27 that any suggested alterations must be
28 looked at calmly and judicially in order
29 that the Act be kept within its proper
30 bounds as Workmen's Compensation ~~legislation~~



1 and that balance between contributions
2 and benefits be kept in balance.

3 It may be reasonably observed that the
4 contribution of the workman to the
5 scheme which involves no **actual** payment by
6 him has certainly not increased over the
7 years. On the other hand, the employer has
8 been called upon to make all direct
9 payments required of the scheme and
10 which payments of compensation, medical
11 aid and administration costs of the
12 Board have steadily increased over the
13 years. This ignores the substantial
14 cost associated with internal expenses
15 associated with administration and
16 the costs of rehabilitation programs,
17 both of which have been incurred by
18 the employer. If it is to be insisted
19 that benefits which are properly class-
20 ified as social welfare are to be
21 forced into the Act, it would be but
22 just and equitable that all interested
23 parties, the employer, the workman
24 and the government, contribute to
25 the scheme in proportion to the
26 benefits received by **each** class. It
27 is to be noted that the consolidated
28 revenue fund of the province contributes
29 nothing to the present cost of compensa-
30 tion, medical aid or the administration



costs of the Board."

The next brief that I have, sir, is that of the International Railway Brotherhoods, page 3 under the heading "Burial Expenses" there is a recommendation that the amount be increased to \$700 plus the actual cost of the burial plot.

Then, under the Payment to a Widow or Invalid Husband, Section 37, subsection (1) (c), the brief recommends this section be amended to provide a monthly payment of \$125 as opposed to the present \$75.

"We believe this to be an equitable amount in view of increased living costs."

And under the heading "Payments for Children of Deceased Workmen" , the brief states:

"Amend section 37 to provide a payment of \$60 per month to dependant children and \$75 per month to orphan children and where there are three or more dependants or orphan , dependants, the payments on the whole should be increased accordingly.

"The injuries resulting from the accident have taken him completely outside the labour force and it is our contention that he should be ..."

That does not seem to follow.

THE COMMISSIONER: No, it doesn't.

MR. GUTHRIE: This is dealing with the light work question. I think that in the reproduction of



1 the previous page, the bottom part of it has been missed.
2 We will try to get that wording. I think I would then
3 move on to the heading, "Wage Ceiling on which Compensation
4 is Paid" at the foot of page 4. This is section 44 and all
5 other relevant sections:

6 "We believe that the wage ceiling on
7 earnings which is considered in the
8 computation of benefits should be
9 abolished so as to include the yearly
10 earnings of all workmen. No compensation
11 is payable on earnings in excess of
12 \$6,000. This limitation decreases
13 the percentage of compensation and
14 increases the wage loss for workmen
15 earning in excess of that amount.
16 There is no justification for denying
17 equitable compensation to the injured
18 workman whose average earnings exceed
19 \$6,000."

20 And then an example is given which perhaps need not be
21 read, to show the effect of this on those earning in
22 excess of \$6,000. **The Example ends** with the one figure of
23 an actual earnings of \$8,000, and the percentage of actual
24 earnings paid of only 56.25 per cent:

25 "One of the fundamentals enunciated
26 by Sir William Meredith was that
27 during periods of **disability, a**
28 workman should receive a percentage
29 of his earnings. When Sir William
30 made his report in 1911 **stating** an



1 annual salary limit of \$2,000, he
2 did so to differentiate between the
3 employer and the work people. Bear
4 in mind that most employers in those
5 days were persons actually directing
6 company policy and were in the main,
7 entre preneurs. Bear in mind also
8 that the wage rates for skilled
9 machinists at that time, as an
10 illustration, was approximately 11
11 cents per hour. It is our contention
12 that workmen during periods of total
13 temporary compensable disability
14 should receive a minimum of 80 per
15 cent of actual earnings. Because so
16 many work people earn in excess of
17 \$6,000./^{per year} at the present time their
18 compensation payments are in essence
19 only 40, 50 or possibly 55 per cent
20 of earnings."

21 I think that is all for that brief.

22 I believe that the Ontario Federation of

23 **Construction Associations** was asked to attend here tomorrow,
24 Mr. Commissioner, so I can pass that brief, although it
25 does deal with these subjects.

26 The brief of the Ontario Forest Industries
27 Association deals with Scale of Compensation at page 4
28 of its brief:

29 "This Association believes the Act, in
30 its intent, to be as fair as possible to



1 both the employer and employee with
2 perhaps a tendency towards over-
3 protection of the latter as described
4 by Mr. Justice Roach in his **discussion**
5 of scales of compensation.
6 He emphasised that total disability
7 payments continue as long as the
8 disability lasts. These payments are
9 not affected detrimentally by the many
10 situations and conditions that affect
11 the earning power of the workman who
12 is uninjured. The last revision of
13 the scale of compensation increased the
14 scale to \$6,000 and 75 per cent of
15 earnings. Compensation payments are
16 not taxable and an employee may draw,
17 under certain circumstances, the
18 equivalent of his full earnings after
19 income tax deduction. Any increase
20 in the present scale could result in
21 an increase in claims for compensation.
22 We consider it undesirable and against
23 the best interest of the public to
24 provide any inducement that will in
25 any way prolong the period of inactivity
26 beyond the proper limits. It has been
27 charged that this already has happened
28 in the case of the Federal Government-
29 administered unemployment insurance
30 program. Ontario today, and we hope



1 in the future, will require the full
2 productive capacity of its available
3 workmen. It is, therefore, our opinion
4 that the present scale is adequate and
5 fulfillsthe objectives of the Act."

6 In the submission of the Ontario Municipal
7 Association, Mr. Commissioner, there is one reference to
8 this question. It is item 6 on page 4 of the brief, being
9 a resolution of the Association of Mining Municipalities
10 of Northern Ontario to insure that payments for temporary
11 partial disability will be equal to those of the general
12 Welfare Assistance Act.

13 THE COMMISSIONER: I am sorry. Are you on
14 page 4.

15 MR. GUTHRIE: Page 4, the last item. It
16 begins:

17 "Whereas, because of the nature of the
18 principal industry of the Mining
19 Municipalities of Northern Ontario
20 there is a relatively high incidence
21 of injury which often results in
22 temporary partial disability; and
23 Whereas the provisions of the Workmen's
24 Compensation Act of Ontario provide that
25 where temporary partial disability results
26 from an injury, compensation shall be
27 based on the difference between the
28 average weekly earnings of the injured
29 person before the accident and the
30 average amount that he is able to earn



1 in some suitable employment or business
2 after the accident;and, whereas, because
3 of the nature of the principal industry
4 in the mining municipalities there is
5 seldom suitable employment available
6 to workmen;and

7 Whereas the amount received pursuant
8 to the provisions of the Workmen's
9 Compensation Act (Ontario) is frequently
10 less than the amount a recipient of
11 unemployment relief assistance would
12 receive under the regulations of the
13 General Welfare Assistance Act (Ontario);
14 and

15 Whereas when such compensation is
16 less than the amount a workman would
17 be entitled to under The General
18 Welfare Assistance Act (Ontario), the
19 municipalities must provide supple-
20 mentary assistance to these injured
21 workmen and their families.

22 Now, therefore, be it resolved that
23 the Association of Mining Municipalities
24 of Northern Ontario do present to the
25 Minister responsible for the adminis-
26 tration of The Workmen's Compensation
27 Act (Ontario) a recommendation requesting
28 that legislative amendment to Section 41
29 of the Workmen's Compensation Act
30 (Ontario) be made so that the Section



will read as follows:

' 41. Where temporary partial disability results from the injury, the compensation shall be a weekly payment of 75% of the difference between the average weekly earnings of the workman before the accident and the average amount that he is earning or is able to earn in some suitable employment or business after the accident, provided that such weekly payment together with any other earned income, shall not be less than the workman would receive under the provisions of The General Welfare Assistance Act.' "

THE COMMISSIONER: I suppose the deficiency has to be made up by the municipality?

MR. GUTHRIE: That is the problem here.

THE COMMISSIONER: This comes from where?

MR. GUTHRIE: It comes from an association of all the mining municipalities.

THE COMMISSIONER: With requests for amendments to procedures from the Town of Timmins, I thought maybe it didn't.

MR. GUTHRIE: Just glancing at item 8 on page 6, perhaps this has some relevance:

"8. Workmen's Compensation Receipts
To Be Credited With Unemployment



1 Insurance Contributions

2 From the Sudbury and District

3 Municipal Association

4 Resolved that the Unemployment

5 Insurance Commission be petitioned

6 through the Province to have its Act

7 amended to allow men who are in

8 receipt of compensation payments under

9 the Ontario Workmen's Compensation

10 Act to be given towards Unemployment

11 Insurance for the weeks they are on

12 total temporary compensation, by

13 deduction of Unemployment Insurance

14 premium payments from their compen-

15 sation cheques, so that there is

16 no loss in weeks of contribution

17 while they are absent from their

18 work as compensation claimants."

19 That might be considered as somewhat beyond

20 the scope of this Commission, requiring a petition to

21 Ottawa.

22 THE COMMISSIONER: I think what they are
23 asking is that the man, instead of having to pay his own
24 without any change in the compensation received, should
25 get compensation less premiums and the premiums should be
26 remitted direct to Ottawa. It is a little difficult to
27 understand.

28 MR. GUTHRIE: It is just that they ask that
29 it be done by petition to the Commission.

30 THE COMMISSIONER: Well that, of course



1 is another matter. It was probably submitted to the Municipal Association under those terms and has been included in the brief to us.

4 MR. GUTHRIE: In the brief of the Provincial Federation of Ontario Professional Fire Fighters, beginning at page 8 with the heading "Earnings":

7 "It is the submission of the Provincial Federation of Ontario Professional Fire Fighters that the ceiling of \$6,000.00 on which compensation payments are based is too low for the present standard of wages throughout industry to-day. It is our contention that the workman should be paid during the periods of total temporary disability in accordance with a standard which will equalize his average earnings during this period. The base for compensation payments to the injured workman should be realistic enough to provide the wage earner with approximately the same take home pay which he enjoyed when working.

23 Payments to Dependents

24 One of the fundamentals established by Sir William Meredith was that payments in the form of compensation as a result of an accident should bear a direct relationship to a man's earnings. This would ensure that a workman's family would not be forced to accept



1 a lower standard of living than that
2 which he had attained by his skill and
3 his resulting wages.

4 The Federation is very clear and is in
5 unanimous agreement with other organiza-
6 tions and associations that a widow or
7 an invalid husband cannot exist with
8 any degree of respect, comfort or
9 decency on the allowances presently
10 in force under the Act, Section 37.

11 We submit that a widow who becomes
12 entitled to the benefits under the
13 terms of the Workmen's Compensation
14 Act should receive a minimum of 75%
15 of her late husband's earnings as
16 long as she remains a widow. We believe
17 that a widow receiving this more real-
18 istic pension benefit could maintain
19 herself and her family on an economic
20 level close to that to which she was
21 accustomed by virtue of her late husband's
22 earnings. Dependant children have to be
23 fed and clothed and educated and the
24 benefits now provided in the Workmen's
25 Compensation Act for these dependants
26 fall far short of the actual require-
27 ments in this present society.

28 The Federation is not unmindful of
29 the fact that many of the workmen who
30 are killed in their line of endeavour



1 leave some type of widow's pension
2 accruing from superannuation funds,
3 employer-employee retirement systems,
4 et cetera. We submit to you, Sir, that
5 widows pension payments, referred to
6 above, should not be calculated to
7 adversely affect those persons who will
8 or may not be in receipt of such benefits.

9 Section 37 (3) b and c limit the total
10 amount which can be paid to one dependant
11 family. This places an unduly onerous
12 financial strain on a large family and
13 inflicts unbearable hardship. It is
14 our firm belief that this restriction
15 should be removed from the Statute.

16 Permanent Partial Disability

17 The Federation is concerned with
18 persons who fall within this category
19 for two reasons. Firstly, pensions
20 awarded for permanent partial disability
21 are static and decrease every year in
22 direct proportion to the increase of
23 the cost-of-living. Secondly, it is
24 one of the most difficult tasks to
25 decide as to the proper percentage to
26 which a man is disabled who has lost
27 a leg. No rule of thumb can be devised
28 to adequately size up loss of earning
29 power. The loss of a limb by one
30 workman may result in a decrease in



1 his ability to earn to the extent of
2 75% or even 100% while with another
3 the resulting disability is less:
4 each case must be examined in the light
5 of the workman's ability to work or
6 earn a living with his disability.

7 The Federation submits to Your
8 Lordship that there should be a provision
9 written into the Act to provide for an
10 escalator type arrangement to adjust
11 pensions awarded for permanent partial
12 disability, so as to keep these pensions
13 abreast of the expansion of the economy.

14 We also believe that some provision
15 should be made in the Act to allow the
16 Board to take into consideration the
17 employee's earning power before he was
18 permanently disabled. It is our con-
19 tention that where a man has suffered a
20 permanent disability which does not
21 allow him to continue in his line of
22 employment, there should be a Section
23 in the Act to allow the Board to adjust
24 the pension to approximate a considerable
25 percentage of his earnings prior to the
26 accident."

27 The United Steel Workers of America, deal
28 in some length with these matters but they will be heard
29 at a later date, sir.

30 I believe there is no other brief that has



1 not been presented or read by me which deals with benefits,
2 but if any other person is present, wanting to deal with
3 that subject, they might say so. If not, we have finished
4 that heading.

5 MR. ESTEY: We come now on the notice to
6 heading number two, Financial Matters, including Investment
7 of Board funds, Schedule 1, Classifications and Assessments,
8 Relationship of Compensation to other benefits and Elimina-
9 tion of Schedule 2.

10 THE COMMISSIONER: Mr. Estey, I want to
11 take a slightly longer adjournment today, so I think if
12 we adjourn now until just a few minutes before 2:00 o'clock,
13 we will then start on the second heading. We'll adjourn
14 now until 2:00 o'clock.

15 --- Luncheon Adjournment.
16

17 MR. ESTEY: The Canadian Manufacturers'
18 Association.

19 MR. RUSSELL: My name, sir, is Norman E.
20 Russell. May I say, Mr. Commissioner, first of all that
21 we appreciate your indulgence in letting us come in at
22 this time. It is difficult for some of us and, I, person-
23 ally was out of town for the last two days and didn't get
24 in until late last night.

25 The matters that we wish to present at
26 this time are those referred to in Mr. Johnson's letter
27 of September the 23rd, numbers one, two and three; in
28 other words, the matter of Compensation, the Financial
29 Matters, and the Composition of the Board and its Annual
30 Report.



1 With your permission, sir, I would like to
2 read from our brief. The brief is very brief and I don't
3 think it will bore you with a lot of words. I would like
4 to say, first of all, on the matter of Salary Ceilings,
5 that I am speaking about two kinds of ceilings. One is
6 a ceiling on the amount of earnings on which compensation
7 is based, a ceiling which at the present time is \$6,000.
8 The other ceiling is the matter of the percentage that is
9 permitted of the earnings by the workman for compensation
10 purposes.

11 Now, with regard to the first ceiling, this
12 matter of a salary ceiling which, at the present time, I
13 understand, is \$6,000, we have been silent in our brief
14 about this and we are silent because we recognize that the
15 ceiling of this kind should be adjusted from time to time
16 as conditions change. As long as the ceiling is maintained
17 in the same kind of relationship to overall wages, as it
18 has in the past, this satisfies our requirement about that
19 ceiling. So, we are not talking about any dollar figure
20 on the matter of the ceiling.

21 As regards the other ceiling, it is in
22 sections 22, 23 and 24 of our brief and I would like to
23 read it to you from page 8:

24 The Association recognizes that the main-
25 tenance of an appropriate relationship between the scale
26 of compensation paid to a workman when incapacitated by
27 injury, and his income when he is at work, is one of
28 importance. The rate of compensation now in effect in
29 Ontario and in fact in each province, is 75% of average
30 earnings. It is respectfully submitted that this percentage



1 should be the upper limit and should not be exceeded.

2 23. Taking into account the fact that the work-
3 man, while receiving 75% of his average earnings, is not
4 called upon to pay income tax, unemployment insurance
5 deductions, cost of travel to and from his place of employ-
6 ment, and all other day-to-day expenses related to his normal
7 employment, it is clear that the amount of money the worker
8 has to live on, under compensation, can closely approximate
9 his take-home pay when working. Any increase in this per-
10 centage can produce a situation whereby the workman is
11 better off financially on compensation than when working.

12 24. Rather than increase the percentage basis
13 for compensation, the Association believes that more
14 emphasis should be placed on devising means to enable the
15 workman to return to employment at full wages.

16 That, sir, is our submission on this particu-
17 lar item.

18 THE COMMISSIONER: What means do you suggest
19 to enable the workman to return to employment on full wages?

20 MR. RUSSELL: Retraining, for one thing.
21 Find him a job to the extent that it is possible. He
22 cannot always be returned to the employment he was doing
23 before. In our view, a great deal can be done - things are
24 being done, but a great deal more can be done - to find
25 employment for the injured worker. We speak more about
26 this on the matter of temporary partial disability.

27 Then, sir, item number two, Temporary
28 Partial Disability Allowances, and, again reading from our
29 brief:

30 25. The effect of Section 41 of the Act is that



1 where an injured workman progresses from a condition of
2 temporary total disability to one of temporary partial
3 disability he must be prepared to accept some lighter work
4 and draw reduced compensation. This is an equitable ar-
5 rangement but difficulties arise where no suitable light work
6 is available with either the pre-accident employer or any
7 other employer.

8 26. This is an area where those who mistakenly
9 regard Workmen's Compensation as an integral part of grow-
10 ing social welfare legislation press for further coverage
11 by the Act to the extent of providing full compensation
12 until full employment is found. The Association submits
13 that such action would alter the status of the Act from one
14 of compensation to that of another welfare statute. It
15 strongly opposes such a change but recognizes there is no
16 simple answer to the problem. The availability of work,
17 light or otherwise, for a particular individual is subject
18 to many factors and often is not related to the fact that
19 the workman had an accident.

20 27. The Association suggests that this important
21 and controversial aspect of compensation deserves the most
22 careful study. While at present it has no detailed
23 recommendations to make, it suggests that a reasonably
24 clear dividing line must be drawn in such cases between
25 those which are proper claims on Workmen's Compensation
26 and those which more properly should be dealt with through
27 Unemployment Insurance. Possibly an answer lies in rehab-
28 ilitation through the use of the existing federal-provincial
29 facilities for training and re-training.

30 This is a particularly difficult area. Not



1 always is employment available of a lighter kind for a
2 person who is partially disabled but able to work. It is
3 not always available with the former employer and not always
4 is it available with any employer. Economic conditions
5 are such at times when the lack of employment opportunities
6 is not present, not because the workman has an accident but
7 just because the economy of the country is such that employ-
8 ment is not available. So, we have this difficult area:
9 would he have had a job had he not been injured? We are not
10 sure of that at certain times. Today you might say that
11 the answer is fairly clear because we are at a time of
12 reasonably full employment.

13 I think everybody recognizes that it is
14 important for the convalescent -- I use that word in a
15 broad sense -- for the convalescent injured workman to be
16 put back to work. It is good for him from the standpoint
17 of his own rehabilitation and, of course, speaking from a
18 financial standpoint, it is good for the accident fund.
19 But it is desirable that he get back to work. In our view
20 one solution is again, this matter of re-training. If work
21 is not available that he can do, then it seems to us that
22 maybe it should be required of him that he attend courses
23 that are available which would train him in work that
24 might be available for him. There seems to us, sir, to be
25 a reluctance to take the benefits available under unemploy-
26 ment insurance in at least some cases because the person
27 himself is not desirous of depleting his available benefits.

28 THE COMMISSIONER: You say that under the
29 Workmen's Compensation Act there is no means of insisting
30



1 on his retraining?

2 MR. RUSSELL: I do not think there is.

3 THE COMMISSIONER: And as a consequence,
4 you feel that the retraining should come within the Unem-
5 ployment Insurance Act?

6 MR. RUSSELL: It is a suggestion, sir.

7 This is one of our possible solutions. But it is better,
8 it seems to us, in the first case, for the partially dis-
9 abled employee to have some work to do. This is the best
10 thing. The second best thing is for him to be engaged in
11 a course of training toward work. About the worst thing
12 that can happen is that he sits at home and does nothing.

13 THE COMMISSIONER: Well, if it is partial
14 permanent disability, then he is probably coming under
15 the Unemployment Insurance Act anyway.

16 MR. RUSSELL: I think he is. I have heard
17 that there is some reluctance for him to claim his unemploy-
18 ment insurance, that there is more pressure to try and get
19 full compensation under the Workmen's Compensation Act.
20 This is hearsay. I cannot say more than that.

21 THE COMMISSIONER: I suppose a man who is
22 being forced to retrain might not learn very much. If he
23 goes willingly then there will be some cooperation. However,
24 it is a reasonable suggestion.

25 MR. RUSSELL: It seems to us that it is
26 constructive.

27 MR. ESTEY: I take it you make the same
28 comment, perhaps more strenuously with reference to per-
29 manent partial disability and the retraining requirement.

30 MR. RUSSELL: Yes, I would say so.



1 MR. ESTEY: Because if the temporary period
2 were to be quite short there would be not much point in
3 retraining.

4 MR. RUSSELL: The trouble is you don't know
5 how long the temporary period is. If the temporary period
6 depends on the availability of work for the workman, there
7 is no way of knowing how long it is going to be. So, it
8 seems to us that the thing to do is to get going on a
9 program that, let us say, is directed toward the eventuality
10 that there is no work available for what that employee is
11 trained to do. It would give him another string to his bow.
12 A very simple part of this might be nothing more than a
13 simple course in English for workmen who do not, at the
14 present time, have a facility in the English language.

15 MR. ESTEY: Are you going on to cover these
16 other matters while you are here, Mr. Russell?

17 MR. RUSSELL: Yes. Item 3, Adjustment for
18 Increases in the Cost of Living and Item 5, Retroactivity
19 of Increases in Benefit Payments:

20 It seems to me these are really one and the
21 same thing. The increases in the cost of living looks to
22 the future but, by the time it takes effect it becomes retro-
23 active. So that, I would like to read items 19, 20 and 21
24 of our brief, having to do with this matter of retroactivity.
25 This is what we say on page 7, starting with item 19, having
26 to do with Increased Benefits in Respect of Past Injuries
27 19. It is difficult to argue against the action of the
28 Legislature which, on several occasions, has amended the
29 Act to increase benefits and to make the increases applica-
30 ble to past accidents. Indeed the Association has not



1 opposed such changes, and particularly I speak of changes
2 in pensions for widows and dependant children. It is,
3 however, critical that the additional funds required for
4 the increases in respect of past accidents have been col-
5 lected from employers. The Association submits that this
6 method of financing improvements in past awards is contrary
7 to a basic principle of the Act as established by Chief
8 Justice Meredith and as set out in the present Section 84.

9 "It is the duty of the Board at all
10 times to maintain the accident fund
11 so that with the reserves, exclusive
12 of the special reserve, it will be
13 sufficient to meet all the payments
14 to be made out of the fund in respect
15 of compensation as they become payable
16 and so as not unduly or unfairly to
17 burden the employers in any class in
18 future years with payments that are
19 to be made in those years in respect
20 of accidents that have happened
21 previously."

22 20. This basic principle provides that the money
23 needed to compensale for accidents in any year should be
24 paid for by those employers who are in business in that
25 year. It recognizes that few employers stay in business
26 indefinitely, that some cease operations and that new
27 employers come under the Act. It is respectfully submitted
28 that to require employers of today and future years to
29 contribute the funds required to pay increased pensions
30 in respect of accidents which occurred in the distant past



1 is contrary to one of the basic financial criteria on which
2 the Act rests. This contention was also advanced by Mr.
3 Justice Roach in his 1950 Report.

4 21. The Association submits that such increases
5 are in effect a cost of living adjustment. They are
6 required by changed conditions which affect all parts of
7 society and, therefore, should be the responsibility of the
8 community at large by means of a charge against public
9 funds.

10 THE COMMISSIONER: We are acquainted with
11 that item.

12 MR. RUSSELL: Item 4, Claim Benefits, we
13 are silent on this matter. Here, again, on behalf of our
14 Association, I would say that benefits in respect of
15 fatality should also be **adjusted** as (I was going to say
16 "cost of living" but I want to get away from that word if
17 I can) let us say as living standards and cost have gone
18 up. It seems to us it is reasonable that benefits for
19 fatal claims should be adjusted as financial conditions
20 change.

21 That gets to the end, sir, of our submission
22 on Benefit Payments and Rates of Compensation. We come
23 next to the matter of financial matters, including (1)
24 Investment of Board Funds. This we deal with very briefly
25 under number 32, on page 11 of our brief and we say just
26 this:

27 32. It is submitted that Section 107 should
28 be broadened to permit investment in those securities
29 which are normally acceptable for trust fund investments.
30 We do feel that the investment powers of the Workmen's



1 Compensation Board are unduly limited by the Act. And as
2 a result of this, the accident fund does not have the
3 opportunities that, let us say, other insurance funds have
4 of interest and other gains as a result of this.

5 Schedule 1, Classifications, our brief is
6 silent on this matter. Our members do, from time to time,
7 complain about the rate numbers under which they are
8 classified and this causes discussion with the Board. We
9 have no suggestions to make in the matter of Change of
10 Legislation which would correct the unhappiness of those
11 who feel themselves improperly classified. In general, I
12 think we have no overall criticism of the way in which the
13 Board is classifying and we have heard here a few days
14 ago, that the appeal structure for compensation is available
15 to members in the matter of classification and I think we
16 are prepared to let the matter rest on that basis.

17 THE COMMISSIONER: You can carry on if you
18 wish.

19 MR. RUSSELL: Thank you, sir. The next
20 item is Relationship of Compensation to other Benefits.
21 This we cover in section 33 in a very brief way, on page
22 11.

23 Pensions and Retirement

24 33. The Association recommends that an exhaus-
25 tive study be made of the status of pensions under Workmen's
26 Compensation when workers reach retirement age. With the
27 introduction of the Canada Pension Plan and its related
28 social security schemes it has now become important to
29 examine the relationship between such payments. Such a
30 field of study might anticipate a decision in approximately



1 five years' time. We recommend that the matter be studied.
2 We can see a problem here.

3 THE COMMISSIONER: The previous recommenda-
4 tion is that payment of disability pensions under the
5 compensation fund be studied, but you say it should go
6 further than that and they should study the whole field
7 including old age pensions?

8 MR. RUSSELL: This is our view, study the
9 whole field. Maybe by the time we are through with it it
10 gets narrowed down but it should be started in a broad way.
11 These, of course, are pensions which are also partly
12 supported by the employer financing compensation pensions
13 and also in part financing other pensions. The area, we
14 feel, should be studied.

15 THE COMMISSIONER: Of course, in Britain
16 all these things are integrated. All these welfare schemes
17 together with the Workmen's Compensation Act are all one.

18 MR. RUSSELL: I have not heard whether it
19 simplifies it or complicates it, sir.

20 THE COMMISSIONER: Well they think it
21 simplifies it but it is not under consideration here at
22 any rate.

23 MR. RUSSELL: Now to item 4 under Elimina-
24 tion of Schedule 2. We really have nothing to say about
25 this at all.

26 Now, I understand that if I move into
27 number (iii) - Composition of the Board and Annual Report,
28 I may be moving a little bit ahead but I would like to do
29 it now, if I may.

30 THE COMMISSIONER: All right, we are going



1 into it now.

2 MR. RUSSELL: Once again, we are very
3 brief. Composition of the Board comes under items 9, 10
4 and 11 of our brief, on page 4 and this is what we say:

5 Composition of the Workmen's Compensation Board

6 9. While there is no specific mention in the
7 Act as to Board members being representatives of employers,
8 employees or the public, it is generally recognized that
9 employees have direct representation in the person of the
10 Vice-Chairman. Indeed such labour representation has been
11 identified by the Minister of Labour in the Legislature.

12 10. When the present Chairman was appointed the
13 CMA noted that Mr. Legge did not have a background as an
14 employer as had his predecessor, Mr. Sparrow. However, it
15 recognized the need for a Chairman who is impartial and
16 commends the Government for recognizing this important
17 attribute. It did not, therefore, protest the absence of
18 employer representation on the Board.

19 11. Should it be that employers can be assured
20 that in future all members of the Board will be composed
21 of able and impartial administrators of employers' funds
22 held in trust for the purpose of compensating injured
23 workmen, this Association would support such action.

24 12. On the other hand if, when new appointments
25 are made, one member of the Board is clearly identified as
26 representing labour surely employers who pay all the costs
27 of compensation are entitled to equal representation.

28 THE COMMISSIONER: You say, on the other
29 hand, as the situation is now, as you point out, it is
30 customary to appoint a labour representative to the Board.



1 MR. RUSSELL: Well, sir, the people on the
2 Board have not changed very often in quite a number of
3 years.

4 THE COMMISSIONER: He might be appointed
5 as a so-called labour representative and still be quite
6 independent throughout the years.

7 MR. RUSSELL: The unfortunate thing,
8 though, is - and we have heard it here and heard it else-
9 where - that organized labour refers to him as their man,
10 their representative.

11 THE COMMISSIONER: They might feel that he
12 does represent labour on the Board. The trouble is, though,
13 although it might not be on that level, we are hearing
14 about the adversary system all the way through this Inquiry
15 and the desire is to avoid it. But it could be to implement
16 your suggestion we would either require an additional two
17 men on that Board or else when the change of the Board
18 occurs, that there be one representing labour, one represent-
19 ing industry and one independent chairman.

20 MR. RUSSELL: Really what we think there
21 should be is just good sound and impartial administration,
22 without people representing anybody and the suggestion made
23 some few days ago that there be a labour member on the
24 Review Board and the Appeal Tribunal and the Board, really
25 shocks me when we think of putting an employee's representa-
26 tive in there on these three stages of appeal along with it.
27 It just sounds to me absurd.

28 THE COMMISSIONER: Well, I think I under-
29 stand your submission there too.

30 MR. RUSSELL: Fine, sir. Shall I move on?



1 THE COMMISSIONER: Yes, indeed.

2 MR. RUSSELL: The last item is the Annual
3 Report which we deal with in section 31 and we say very
4 little about it here other than to say:
5 Annual Report of the Board

6 31. The Annual Report of the Board does not
7 give sufficient information on the reserves and investment
8 of the Board's funds and it is recommended that this infor-
9 mation be enlarged upon in future editions. We have always
10 had a problem trying to find out to our own satisfaction
11 what is the state of the accident fund in its various
12 forms.

13 THE COMMISSIONER: Has this improved
14 recently?

15 MR. RUSSELL: The last report of the Board
16 is only just out. We have only had it in the last couple
17 of weeks and this was written before that. I would say
18 that this submission refers to the situation prior to the
19 last annual report of the Board. At the same time I have
20 not studied it enough to say whether the last annual report
21 of the Board answers the problems we have.

22 THE COMMISSIONER: Then perhaps you can
23 enlarge on this simple statement. In what respect do you
24 think there should be further information? Are the
25 reserves not disclosed? Their reserves are disclosed, I
26 suppose, but not how they are composed.

7 MR. RUSSELL: It is a matter of mystery
8 to us to try to find out the adequacy of the reserves.
9 Some of our people think the reserves are too high; others
10 may think they are too low. But when they try to find out



1 or even try to get a committee together to try to assist
2 this commission, we find ourselves unable to get the
3 answers we want because we simply cannot get the figures.

4 THE COMMISSIONER: Then this is your
5 position on reserves, that it is not the investments in
6 which the reserves are placed that you are inquiring about;
7 it is the adequacy of the reserves as against the contin-
8 gencies.

9 MR. RUSSELL: Yes, and we are also inter-
10 ested of course, in the investment return.

11 THE COMMISSIONER: Yes. That is not shown?

12 MR. RUSSELL: I believe it is shown, sir.
13 I believe you can dig it out.

14 THE COMMISSIONER: The background of your
15 complaint is not that you think the reserves should be
16 larger but that they might not need to be so large?

17 MR. RUSSELL: We think they should be
18 adequate but we don't think they should be over-adequate
19 and there are many of us that tend to think they are and
20 in this area we have had certain discussions.

21 THE COMMISSIONER: I am just trying to
22 contemplate how that could be disclosed. I mean, can they
23 show the contingencies? Is there some way of doing that?
24 It would require enormous detail to do that.

25 MR. RUSSELL: I would not be surprised
26 that all the figures are there but not presented in quite
27 the way in which we would understand them.

28 THE COMMISSIONER: It is nothing except
29 an actuarial reporter would ever be adequate, would it,
30 and that would be pretty expensive?



1 MR. RUSSELL: Yes, pretty expensive.

2 THE COMMISSIONER: Well, it seems to be
3 the sort of thing that is not available and you are not
4 likely to find it in an annual report. Doesn't it occur
5 in the annual report that some actuary certifies as to
6 the adequacy of the reserve?

7 MR. RUSSELL: Yes, this is right.

8 THE COMMISSIONER: But you question this?

9 MR. RUSSELL: Sometimes you find that
10 reserves are adequate under a basis last year but they
11 are no longer adequate this year. This may be more modern
12 thinking or something.

13 THE COMMISSIONER: Then, about the invest-
14 ments, it is a matter of adequate interest that you are
15 concerned with.

16 MR. RUSSELL: Yes, and adequate capital
17 appreciation when it is available.

18 THE COMMISSIONER: Adequate appreciation?

19 MR. RUSSELL: Both of them.

20 THE COMMISSIONER: Are you suggesting that
21 the investments should be tabulated?

22 MR. RUSSELL: No, sir, we are suggesting
23 that the Act should be liberalized to permit the Board to
24 invest more widely.

25 THE COMMISSIONER: I can understand that,
26 yes, but we are referring now to the annual report.

27 MR. RUSSELL: No, I don't think we are
28 asking for this, sir.

29 THE COMMISSIONER: Thank.

30 MR. RUSSELL: That is all I have.



1 MR. ESTEY: On the investment, I notice
2 that Manitoba has the widest provision of any of the
3 Provincial Statutes and its Act goes quite a long way
4 towards saying that the Board may invest its funds in the
5 same securities as a Canadian life insurance company,
6 federally licenced, can do. Is that what you have in mind?

7 MR. RUSSELL: This is what we are thinking,
8 yes.

9 MR. ESTEY: That entitles the Board to put
10 money into equities if they qualify with certain, I think
11 it is five years dividends on preference shares and up to
12 20 on some kinds of shares. That is what you have in mind?

13 MR. RUSSELL: That is what we have in mind,
14 yes.

15 MR. ESTEY: So you have two things: You
16 have a good rate of interest on the average and you get
17 capital appreciation and I suppose there is some merit in
18 having a fund of this magnitude put back into the Canadian
19 community.

20 MR. RUSSELL: Yes.

21 THE COMMISSIONER: You might not get as
22 good a rate of interest.

23 MR. RUSSELL: Of course this is possible
24 under today's conditions and we are just trying to give
5 the investors a freedom to take advantage where they can
6 find advantage.

7 THE COMMISSIONER: You ask the same terms
8 as the trust companies. Are the trust company provisions
9 the same or similar to that in the Insurance Act?

10 MR. RUSSELL: I am not an expert in that,



1 but I understand some 25 per cent may be in equities.

2 MR. ESTEY: One last question: Your
3 reference to the past benefits not being charged to the
4 industries who now happen to be in business and you refer
5 to section 84 of the Act. I suppose one could read that
6 Act two ways - it is on page 7 of the brief where you
7 quote it verbatim. You could read that as authorizing the
8 Board to charge present employers enough to look after
9 future increases in disability and future needs for the
10 disabled. I take it you are not suggesting that?

11 MR. RUSSELL: I am not suggesting that,
12 but I think that is better than making it retroactive.

13 MR. ESTEY: Because you are hitting the
14 right class of people?

15 MR. RUSSELL: Right. I am not suggesting
16 it for one minute but --

17 MR. ESTEY: Your main suggestion is that
18 by making it retroactive you are saddling the wrong class
19 of people?

20 MR. RUSSELL: That is right.

21 MR. ESTEY: And, of course, there is nothing
22 for the safe conduct of your enterprise --

23 Now, Mr. Commissioner, moving on to Financial
24 Matters, we have two or three briefs who will not be present
25 to present them today, the Board of Trade, for example,
26 who will be here next week. Is anybody here from the
27 A & T Wrecking and Salvage Co.?

28 Looking around at those in attendance, Mr.
29 Commissioner, I would say the first one here today on
30 this subject are the railways. Mr. Arnold of Bell Telephone



1 is not here.

2 MR. BURNETT: This will be on Schedule 2?

3 MR. ESTEY: Yes, there are four items here,
4 Investment of Board Funds, Schedule 1 Classifications and
5 Assessments, Relationship of Compensation to other Benefits
6 and Elimination of Schedule 2.

7 THE COMMISSIONER: Why not take number 3
8 at the same time, if anybody has anything on that - the
9 Composition of the Board.

10 MR. ESTEY: We might as well, Mr. Chairman,
11 as there is very little on that. Well, if the railways
12 care to deal with those items, we shall be glad to hear
13 you.

14 MR. BURNETT: I don't think we have much
15 to say on the Composition of the Board. I think I can
16 only express the view of Canadian National on this point
17 because we have not been really briefed on the other views.
18 It is fundamentally this, that there has been some dis-
19 cussion about having a member of the Board, a labour member.
20 Somehow, to me, the idea of having any member of any board
21 classified as labour, management or anything, is wrong
22 and that once they come to the board, they should be
23 neutral, absolutely neutral. I think they are, in practice,
24 but I think reference was made last week to the practice
25 of persons going to their member of the board and discussing
26 cases in advance. I submit that is wrong. It is my sub-
27 mission that if there is need for discussion with the
28 Board, using that term broadly, as an entire group, this
29 can be accomplished by having a discussion with not even
30 a member of the Board -- not one of the Commissioners.



1 I recognize it has been felt that one member of the Board
2 should come from labour. I think there is a lot to be said
3 for that because he has experience in labour and can use
4 that knowledge to arrive at a fair decision on any one
5 case. I suppose it was said by the previous speaker that
6 you should really also have a member from industry.

7 I think my submission would be fundamentally
8 this, that while we recognize the desirability of having
9 the Board representative, that my basic submission is that
10 the Board, after they become a member of the Board, that
11 they should be absolutely neutral and not represent any
12 group. I am quite sure that is the way it is done. I do
13 not think we should talk about a member of the Board
14 representing labour or representing industry. The only
15 justification that they should have experience is for
16 that reason, that when they come to sit on the Board, they
17 have a background that will assist them in arriving at a
18 fair result.

19 I do not think I can add a great deal
20 beyond that. My main objection was the practice of persons
21 going to a member of the Board in advance of a hearing
22 for advice. I don't see how that could help but affect
23 his function as a final member of the Board, sitting as
24 a judge.

25 I feel I have not been of great help on
26 that point. I see the desire and need for freedom from
27 bias and I think that is the more important factor.

28 THE COMMISSIONER: Part of the trouble
29 stems from them being referred to as "the labour member
30 of the Board" at the time he is appointed, and in the



1 second place you can understand why labour or members of
2 unions would feel that he was the commissioner who perhaps
3 understood their problems and he would be the man they
4 would try to get in touch with, but I agree with you, they
5 should get away from the conception that he is there to
6 act in any different situation or in any different way
7 from that of any of the other commissioners.

8 MR. BURNETT: Perhaps this is only a side-
9 step on that point, Mr. Commissioner, but I recognize that
10 people who have matters before the Board should have
11 access to them for advice, that there be some officer set
12 up at a lower level, not as a person who will function
13 both as administrative and as a decision maker. It should
14 be some administrative officer at a lower level who can
15 give that advice.

16 THE COMMISSIONER: There is a new set-up
17 on the Board now: There is a department for answering
18 questions. There is, apparently, on the Board -- I believe
19 there is, a claimant's advisor, is there not?

20 MR. BURNETT: Yes, I believe there is. I
21 think it is in British Columbia: I believe out there
22 before the last Commission, they had a similar advisor
23 and he was, if I may say so, a very experienced layman
24 who was of much value to the employees appearing before the
25 Board.

26 THE COMMISSIONER: It seemed to me Mr.
27 Justice Tysoe didn't think there was enough.

28 MR. BURNETT: I believe what was the end
29 result there, sir, was that the gentleman who had been
30 there, remained, but that they added to that a lawyer.



1 THE COMMISSIONER: Yes, I think that was
2 the recommendation.

3 MR. BURNETT: I think that was the recommen-
4 dation. From what I have said, I don't want you to under-
5 stand that people should not be informed as to procedures,
6 but my objection is that the approach for advice should
7 not be to the judicial area of the Board but should be
8 lower in the administrative body, and they should be well
9 qualified and the help should be there.

10 THE COMMISSIONER: We have also heard that
11 this effort to approach the commissioners for advice has,
12 to a large extent, been brought to a stop and those who
13 are accustomed to the old procedure are not very happy about
14 the change.

15 MR. BURNETT: I can understand them not
16 being happy about it, but I think they are essentially
17 fair minded and I think they will appreciate that, should
18 a judicial officer be free to discuss the case --

19 THE COMMISSIONER: As far as one of the
20 commissioners is concerned, the volume of the work before
21 the Board today is such that he simply cannot do it if he
22 is to do the most important work that he is there to do.

23 MR. BURNETT: On the question of Schedule
24 2, representing the railways, of course, we form part of
25 that Schedule, along with certain others, such as the Bell
26 Telephone. The question is, I suppose, whether Schedule
27 2 should be eliminated and that we all become part of
28 Schedule 1. I suppose that is the fundamental question.
29 At least, that was raised -- it was raised in one brief.

30 Now, when you come to look at the Act, I



1 think there is a certain fundamental we must pay attention
2 to, and we start with this. That is, fundamentally, there
3 is the obligation of every employer to pay his own losses.
4 You start with that basis. There is no persuasive principle
5 underlying collective liability, as we find in Schedule 1,
6 of a group of employers except that there ought to be some
7 thing provided in the interests of workmen to secure solvency
8 in the sense that if the workman is employed by an employer
9 of limited financial resources, there might be some real
10 danger that one or a series of casualties might end up with
11 the inability to secure compensation for that employee. It
12 is probably for this reason that in England, and I believe
13 in some of the States, that there is an additional safe-
14 guard represented by insurance placed behind the employer.
15 This was the problem that confronted Sir. William Meredith
16 because, as pointed out by Mr. Justice Middleton in the
17 course of a later Inquiry held before him, he came to the
18 conclusion that the only way to bring about a satisfactory
19 result in regard to the small employers, was to have col-
20 lective liability so the solvency was practically unquestioned.
21 As stated by Sir William Meredith, the railways at that
22 time opposed their inclusion within Schedule 1 of the Act.
23 and he saw no reason why their wishes should not be met
24 if, by meeting them, the Act would not be rendered less
25 beneficial to the employees in the industries included in
26 Schedule 2. It may also be usefully noted that he not only
27 found that the reason for adopting the collective system
28 had practically no application to railways and, in fact,
29 enlarged the group to something more than railways. But
30 he also favoured the insertion of still more industries



1 within that schedule -- that is, Schedule 2. However, in
2 order that as large a collective purse, if I may use that
3 expression, be available as possible, he did not extend
4 the number at that time. At that date the Act was in
5 a very real sense, experimental, but it is to be observed
6 that neither Mr. Justice Middleton nor Mr. Justice Roach
7 in the later reports, felt that any valid reason existed
8 to change the system of two schedules.

9 It may be useful to refer to a direct
10 quote of Mr. Justice Middleton on page 11 of his report.
11 He said as follows:

12 "In the operation of the Act, each
13 separate industry is treated precisely
14 as if it were a separate class under
15 schedule 1. On the happening of an
16 accident, present and future liability
17 are ascertained as in ordinary cases
18 and the money is at once deposited
19 with the Board by the industry."

20 As a matter of fact, I might just cut in there, if I may,
21 I believe under Schedule 2 we keep a certain deposit on
22 hand with the Board, I believe it is \$50,000 and as the
23 money is used up, we add money to that deposit to bring
24 it up at all times to approximately \$70,000. That is what
25 the C.N.R. does anyway. That policy may be different for
26 other parties in Schedule 2.

27 "At first sight the workman would not
28 appear to be in any way concerned with
29 the question as to whether the industry
30 falls under one schedule or the other



1 so long as the payment to him is adequately
2 secured. It is admitted, I think that
3 there are no complaints on that score."

4 THE COMMISSIONER: I am sorry I didn't hear
5 that. No complaints on what?

6 MR. BURNETT: "On that score." In other
7 words, at that time there were no complaints that the
8 employees were not well served.

9 THE COMMISSIONER: Was that before Mr.
10 Justice Roach?

11 MR. BURNETT: No, before Mr. Justice
12 Middleton, sir. I am now leaving the quote. I think it
13 can be fairly said that since the above words were stated,
14 there has been no evidence and even no allegation to the
15 effect that workmen employed in an industry under Schedule

16
17 THE COMMISSIONER: What page are you read-
18 ing from?

19 MR. BURNETT: This is not a brief. This
20 was not in our original brief, My Lord. I think that it
21 can be fairly said that since the above words were stated,
22 there has been no evidence and even no allegation to the
23 effect that workmen employed in an industry under Schedule
24 2 have not obtained fruitful compensation within the
25 boundaries of the Act, nor do I think that there can be any
26 valid suggestion that industry, under Schedule 2, has been
27 unable to meet all claims that the Board has found against
28 them.

29 Bearing in mind the one fundamental concept
30 view that any employer should, himself, bear the loss, and



1 it was because of the possibility that they could not bear
2 his loss that they were grouped together in Schedule 1,
3 and bearing in mind what I have said that there have been
4 no complaints about the operation of Schedule 2, the one
5 thing that has been mentioned, which I think I should deal
6 with, is that which is dealt with by Mr. Justice Middleton
7 and by each other Commissioner. It is the psychological aspect
8 of a workman in Schedule 2 as opposed to Schedule 1 and
9 the question seems to be put roughly, this way, based on
10 the contention that the employer in Schedule 2 because he
11 is individually responsible to pay compensation in a sense
12 that he must keep a certain deposit with the Board at all
13 times, feels a more immediate impact of any awards than
14 does the employer under Schedule 1. Indeed it has been
15 advanced, correctly or not, that the employer, under Schedule
16 1, having paid what may be called a small premium or share,
17 being sure that it is not too small, towards a much larger
18 fund, is even inclined to urge that any workman of his, who
19 becomes injured, should receive compensation because the
20 impact upon his particular contribution to the fund will
21 not be greatly affected. He is only one of a great number.
22 Whether this is a valid argument is questionable and, cert-
23 ainly, would lose all its validity if this were to become
24 the general attitude of all employers under Schedule 1.

25 The isolated instance of acquiescence in
26 what might be called an unsound claim or marginal claim,
27 would not probably cause even a ripple in the fund but a
28 broad approach of this nature would most certainly bring
29 about equally broad increase in assessments.

30 Now, I should pause there. From the interest



1 taken by employers under Schedule 1 in their attendance
2 before Your Lordship, it is quite obvious that they are
3 not disinterested as a group. This is not a new allegation,
4 this psychological approach. It came before Mr. Justice
5 Middleton as well as Sir William Meredith and we may very
6 well assume that it received very close and sympathetic
7 examination by both and in the result, neither acceded
8 to it but that was just cause not to have Schedule 2.

9 The same may be said with reference to Mr.
10 Justice Roach, so that unless there be more substance to
11 the complaint today, than there was on any of the three
12 prior occasions, when the entire matter came before the
13 aforementioned Commissioners, there would appear to be no
14 reason why Schedule 2 should not remain in its present
15 form, or even for that matter, be enlarged. I might say
16 in that regard, sir, that there was a brief filed by what
17 I might call the Railway Labour Unions. I thought I had
18 it with me - yes, I have. It is signed on behalf of
19 various unions, Locomotive Firemen, Maintenance of Way
20 Employees, Railway Trainmen, Engineers and Transportation
21 and Communication Employees. Nowhere in that brief is
22 there any suggestion that being under Schedule 2 is not
23 satisfactory to these men who are vitally interested and
24 whose opinion one would value most highly.

25 I think I might make this observation -

26 THE COMMISSIONER: It might also have the
27 affect were that submission accepted, that in many cases
28 where right of action exists now against some of these
29 railway companies, it would no longer be available.

30 MR. BURNETT: I can think that would be



1 better. We might be better off. I think there is one
2 observation that one can make, that it is perhaps worthy
3 of some mention that one of the foundations of psychological
4 complaint, if I may keep on referring to it as that, was
5 that prior to 1944, the workman was required to seek medical
6 aid if he came under Schedule 2 from what might be called
7 a company doctor and perhaps there was some justification
8 for the feeling of the workman that he was, in a sense,
9 surrounded by persons whom he might feel represented the
10 employer, rather than himself. This was changed in that
11 year so that now the employee may go to the doctor of his
12 choice. So that this change had been accomplished before
13 Mr. Justice Roach held his Hearings. But there were still
14 company doctors in existence when the Hearings were held
15 before Sir William Meredith and Mr. Justice Middleton.
16 I think that was a very useful step forward, giving a man
17 the right to go to his own doctor.

18 One might also observe that to say that
19 claims are more closely scrutinized where the employer is
20 in Schedule 2, than where he is in Schedule 1, is, I would
21 think, literally to assert that the Board is less jealous
22 that the fund is properly administered than is the employer,
23 when that employer comes under Schedule 2. Well, I would
24 doubt that. I don't really think that the employer is
25 more careful, more stringent or more inquisitive than is
26 the Board.

27 This seems difficult to accept. I doubt
28 whether one can ever prove either proposition as a matter
29 of evidence, but I would think that where a workman comes
30 within Schedule 2, the case is perhaps a marginal one,



1 there would be a very human tendency on the part of the
2 Board to allow the claim and leave the employer to dispute
3 it. I think that is very human. I don't say they would
4 consciously do that, but I think it would be very probable
5 if the employer be so advised.

6 On the other hand, if the claim was by the
7 workman, coming within Schedule 1, where there is no
8 external review, the Board would have to discharge the
9 duty placed upon it of examining the claim and any such
10 tendency or a reason for any such tendency, would be
11 absent. I would think that this assertion is equally as
12 valid as any possible assertion that claims are more
13 closely examined when they refer to industry under Schedule
14 2.

15 The fact remains, My Lord, that whether
16 they are under Schedule 1 or Schedule 2, they both function
17 under the same Act, the same rules and the rules are
18 prescribed by the Board and the decisions are those of
19 the Board. So that we come back anytime to the manner in
20 which the Board is functioning.

21 It may be - and this I have not any calcu-
22 lations on, but I think it is fair to say that perhaps
23 the existence of Schedule 2 makes some contribution to a
24 saving in expense on the part of the Board because I think
25 it is fair to say that in many cases we have obtained
26 statements, information for the Board and if they weigh
27 them and value them, they may accept them and it saves
28 them time. So, if one is talking of savings, I think
29 that redounds to a saving in the Board's administration
30 and, if that is spread over all employers, Schedule 1 and



1 Schedule 2, the existence of Schedule 2 is actually an
2 active help to the cost of the Board and as a rule they
3 are borne by Schedule 2, so it helps somewhat. It is not
4 a large point but the existence of Schedule 2 certainly
5 does not increase the burden on Schedule 1 in any sense.

6 So, in conclusion, it seems to me that
7 Schedule 2 employers, which may be described as rather
8 large employers, I think maybe our railway, I haven't the
9 exact figure, but I would say around 30,000 employees in
10 the Province of Ontario, they feel that they can operate
11 under Schedule 2 better than under Schedule 1 and there
12 has been no indication whatsoever that the employees
13 coming under Schedule 2 or under seniority, in any event
14 the same applies to other employees under Schedule 2, have
15 suffered, which I think is probably the final analysis of
16 it. There is no evidence of it and I am quite sure that
17 the Railway Brotherhoods, in their usual frankness, would
18 have brought it up had it felt that way. I am rather
19 happy to see they did not feel that way.

20 I think those are the basic --

21 THE COMMISSIONER: Is there another factor
22 as far as your company is concerned, that it might be
23 difficult at all times to parcel your employees or payroll
24 between adjoining provinces? I notice one of the initial
25 considerations of Mr. Justice Meredith, I think, when he
26 looked at it, was that--

27 MR. BURNETT: I am aware of the fact that
28 it did have a bearing on his decision but I don't know
29 how much.

30 THE COMMISSIONER: It might apply to your



1 company but it might not apply to some of the others.

2 MR. BURNETT: Well, under Schedule 2 there
3 are other small groups. We have problems because many of
4 our accidents occur in isolated areas. After all, most
5 industries operate under one roof and when an accident
6 occurs there, the claims man is there and it is disposed
7 of. I think there is bound to be a little more delay on
8 reporting accidents in connection with railways because if
9 it happens out on the line somewhere, it has to come in.
10 If it happens downtown here in the shops, there is not
11 difficulty. But we have certainly heard no complaints
12 about delays. Of course, there are appeals.

13 MR. ESTEY: Mr. Burnett, have the railroads
14 ever challenged the right of the province to put you under
15 this Schedule, constitutionally?

16 MR. BURNETT: I don't think it has ever
17 been challenged.

18 MR. ESTEY: There was the hotel case where
19 one of the western provinces challenged the right of putting
20 The Empress Hotel -- I take it this has never been threshed
21 out with you.

22 MR. BURNETT: With all respect, I don't
23 think that is quite the same thing -- the question there
24 was really whether a hotel which is operated by the C.P.R.
25 was an integral part of a railway and the Courts finally
26 held it was not. Therefore, it came under the Provincial
27 and fell under B.C. law.

28 MR. ESTEY: Wasn't there a case between
29 the C.P.R. and Saskatchewan over the application of the
30 local Workmen's Compensation Act to the running trades



1 itself?

2 MR. BURNETT: I hate to be told of some
3 railway case -- if there was, I am not familiar with it.
4 As far as I know, we have never actually disputed it. I
5 don't think we would want to.

6 THE COMMISSIONER: You are very satisfied
7 to be under Provincial jurisdiction?

8 MR. BURNETT: As a practical matter, I
9 think the employees benefit from it.

10 MR. ESTEY: In Schedule 2 there is no
11 mention of air lines. They are not part of your group,
12 are they?

13 MR. BURNETT: They are, as a matter of
14 fact, in practice. In practice, Air Canada, which is our
15 counterpart, and Canadian Pacific Airlines are administered
16 under Schedule 2. They were never actually brought in as
17 a named part of it. This occurred quite some years ago
18 when they first started, and they were adjuncts of the
19 C.N.R. and C.P.R.; therefore, they are administered under
20 Schedule 2. In other provinces, I think they are named.

21 MR. ESTEY: In your brief, Schedule A, you
22 list administrative charges. Do you pay those to the
23 Board under Section 118, or some such number? Could
24 others pay to the Board?

25 MR. BURNETT: Yes, $8\frac{1}{2}$ per cent, I believe.

26 MR. ESTEY: This has nothing to do with
27 your own administrative costs?

28 MR. BURNETT: Oh, no, that is over and
29 above that.

30 MR. ESTEY: Because I take it you have a



1 fairly substantial item of administrative costs.

2 MR. BURNETT: If you look at the heading
3 of our brief, we set them out, Mr. Estey.

4 MR. ESTEY: Those are separate figures.
5 The administration charges in paragraph 2 are not the same.
6 Of course, the amount is considerably greater.

7 MR. BURNETT: The third column on the right,
8 those are what we pay the Board.

9 MR. ESTEY: What is the third column on the
10 right of Schedule A?

11 MR. BURNETT: Those are the same thing.
12 Those are paid to the Board.

13 MR. ESTEY: Those are the same for different
14 people?

15 MR. BURNETT: Yes. The simple answer is
16 that we did not have the returns from those companies in
17 when we did the first page of our brief.

18 MR. ESTEY: I suppose in addition to that,
19 you have your own administrative costs in each employer's
20 case of running his own affairs in connection with compen-
21 sation?

22 MR. BURNETT: Yes, mostly rehabilitation,
23 frankly.

24 MR. ESTEY: The principal discussion that
25 has arisen about this, occurs in one of the Union briefs -
26 not a railroad trade union - in which they deal with you
27 by saying that, in effect, you contest more claims than
28 employers do under Schedule 1. Let us deal with that item:
29 Do the railroads participate in the appeal procedure on a
30 large scale, or how would you describe it?



1 MR. BURNETT: I would say on a very low
2 scale.

3 MR. ESTEY: Then the statement is made
4 that this also means the administrative costs for Schedule
5 2 employers must be considerably higher than Schedule 1.
6 Do you have any information about that?

7 MR. BURNETT: I have no information to
8 say there would be. I don't follow the logic of that, as
9 to why they should be higher.

10 MR. ESTEY: The Board has not told you
11 that they are?

12 MR. BURNETT: No.

13 THE COMMISSIONER: Your theory is they
14 should be less?

15 MR. BURNETT: We understand that the Board
16 pro rates, we don't know how, and no one needs to know
17 how, really, what they figure is a fair estimate of our
18 share of the administration is.

19 MR. ESTEY: On the other side of the
20 discussion, what are the advantages to the railroads
21 staying under a separate Schedule?

22 MR. BURNETT: I think, first of all, they
23 have control of their own administration of it. They do
24 their own investigations, they have contact with their
25 own employees, and this is a rather large enterprise.
26 There is quite a bit of money involved. For one thing,
27 that by paying deposits - this is purely financial - that
28 we don't pay in advance. We pay as the money is required.
29 That is one thing. But, the fundamental thing is that we
30 think we can do a better job by administering it ourselves



1 and it is the fundamental job of any employer, until some-
2 body says we are being unfair or illogical or anything like
3 that, and I think we should be entitled - this is a rather
4 large enterprise which is quite different from others; it
5 is spread not only all over Canada, but all over Ontario.
6 It is not just a neat little package.

7 MR. ESTEY: Do you find any administrative
8 difficulty when you find that you now have such long diesel
9 locomotive runs crossing provincial boundaries - do you
10 have any trouble administering it?

11 MR. BURNETT: Trouble, yes, but it all
12 works out. Certainly everytime you get overlapping - I
13 would not say "trouble". It does create problems, of course
14 it does.

15 MR. ESTEY: You are not requesting any
16 amendment to those sections of the Act due to the mobility
17 of the worker?

18 MR. BURNETT: No. In my humble opinion,
19 the Act is being administered very well right now. I have
20 made certain suggestions in my brief earlier that we have
21 no problems that way.

22 MR. ESTEY: Thank you, Mr. Burnett.

23 MR. BURNETT: I don't know whether Mr.
24 Butterill has anything to say.

25 MR. BUTTERILL: No, I don't think I have
26 anything to add to what Mr. Burnett has said. I just
27 join in his remarks. I would like Mr. Estey to tell us
28 about the Workmen's Compensation case out west, because
29 I don't know about it either.

30 MR. ESTEY: I see Mr. Arnold is present



1 from Bell Telephone and represents some of the people under
2 Schedule 2. Do you wish to say something, Mr. Arnold?

3 MR. ARNOLD: Mr. Commissioner, I have not
4 very much to add to what Mr. Burnett has said. I might
5 say, though, that we have recently been moved from Schedule
6 2 to Schedule 1 in the Province of Quebec under the Quebec
7 Workmen's Compensation Act.

8 THE COMMISSIONER: Have they done away with
9 Schedule 2 there altogether, or just moved certain people?

10 MR. ARNOLD: I can't answer that. I know
11 we have been transferred to Schedule 1 in a special sub-
12 section in which two other telephone companies have been
13 placed - the Quebec Telephone Company and another smaller
14 company. We are quite happy to be in Schedule 2 for
15 various reasons. If there were some action taken to
16 transfer us to Schedule 1, we feel that consideration
17 should be given to the type of operation we have and our
18 safety record and that we should not be put in any position
19 where we would suffer from being treated in the same way
20 as some other company which might not have the same safety
21 record.

22 THE COMMISSIONER: If you were put in a
23 classification, you would be subject to the overall
24 assessment of the group.

25 MR. ARNOLD: Yes.

26 THE COMMISSIONER: You are free of that
27 now?

28 MR. ARNOLD: Yes, you might say we are
29 self-insurers, the way it works.

30 There are a few points: our estimated



1 assessable payroll for the Province of Ontario, taking wages
2 up to \$6,000 per annum, for the year 1965. would be approx-
3 imately \$85 million. Our average yearly accident cost is
4 approximately \$70 thousand; that is, under our present
5 Schedule 2 position, and this represents $8\frac{1}{2}$ cents for every
6 \$100 of total assessable payroll. We feel if we were
7 transferred to Schedule 1, there would be no real justifi-
8 cation for any higher cost to us.

9 THE COMMISSIONER: There are lots of people
10 in Schedule 1 who feel that way, the way they are assessed
11 too.

12 MR. ARNOLD: I have a copy of the submission
13 we made when this matter was being considered by the Quebec
14 Workmen's Compensation Board. I just might read a few
15 things from it. We mention that employers now in Schedule
16 2 are the C.N.R., the C.P.R., Bell Telephone, Federal and
17 Provincial Governments, and among these companies **their**
18 employees operate in both provinces, have to perform their
19 duties in both provinces. Our accident benefit plan provides
20 payment at the full pay rate for the first thirteen weeks
21 of disability. The Compensation payment is approximately
22 75 per cent of this amount. Our practice is to continue
23 payments to the injured employee without a break in his
24 income. If the Commission were to pay the employee, that is
25 if we were put under Schedule 1, his only income, pending
26 a decision, would be the difference between the Compensation
27 rate and full pay benefits. Since decisions frequently
28 take some weeks the employee might be faced with a serious
29 financial problem.

30 The Company could, of course, continue to



1 advance payments at the accident benefit rate and then,
2 presumably, the Commission would reimburse the company to
3 the extent of the compensation award.

4 THE COMMISSIONER: That really has nothing
5 to do with Schedule 2. I mean, the same thing occurs under
6 Schedule 1.

7 MR. ARNOLD: Except under Schedule 1 the
8 employee gets his payment from the Commission.

9 THE COMMISSIONER: On the contrary, we were
10 told this morning by a labour union, as I understand it,
11 that in cases where a company chose to keep them employed,
12 that the Board paid the employer whatever it would have
13 paid the man in cases where the employer was paying full
14 wages. Maybe that only applied to cases where they kept
15 him on on a lighter job, notwithstanding his disability.
16 It might not have referred to the cases you are talking
17 about.

18 MR. ARNOLD: I am not sure about that, Mr.
19 Commissioner.

20 I do not think I have anything more to say.
21 I think Mr. Burnett has covered it very well. Do you
22 wish me to file this, Mr. Estey? Do you think it would
23 be of any value?

24 MR. ESTEY: Yes, I think it would; that is
25 a submission to the Board in Quebec?

26 MR. ARNOLD: Yes.

27 MR. ESTEY: So under their power, the
28 Board had the power to move you to group 1?

29 THE COMMISSIONER: Yes, I think so.



1 EXHIBIT NO. 17:

Submission of Bell Telephone
2 Company to Workmen's Compensa-
3 tion Board of Quebec.

4 MR. ESTEY: Neptune Motors?

5 THE COMMISSIONER: We might break for five
6 minutes.

7 --- Short recess.

8
9 MR. ESTEY: Ontario Federation of Labour,
10 Mr. Commissioner.

11 MR. CRAIGS: This is just on the question
12 of Schedule 2, Mr. Estey?

13 MR. ESTEY: Any of the questions, sir,
14 which we dealt with a moment ago in the notice. Any
15 Financial Matters including Investment of Board Funds,
16 Schedule 1 Classifications and Assessments, under 1 and
17 the other benefits which relate to Workmen's Compensation
18 cases.

19 MR. CRAIGS: Mr. Commissioner, I would
20 like first to deal with that area concerning the Schedule
21 2. If you will bear with me just a moment, sir, I will
22 read a few lines from our submission to you on that. At
23 page 16, sir. I am commencing at the second paragraph,
24 Your Lordship.

25 Over the years this system has led to many
26 complications and employers under Schedule II are constant-
27 ly contesting compensation cases and disclaiming respons-
28 ibilities for accidents happening on their premises. In
29 many cases, an injured workman has to wait many months
30 before his compensation claim is settled and often he has



1 to go through the complete appeal procedure to establish
2 his claim.

3 THE COMMISSIONER: Doesn't that happen
4 under companies under Schedule 1?

5 MR. CRAIGS: You mean delays, sir? Yes,
6 delays do occur.

7 THE COMMISSIONER: The contesting of a claim?

8 MR. CRAIGS: In this question, My Lord,
9 the question of contesting a claim, it is not necessarily
10 going through a formal procedure before the Appeals Tribunal
11 or before the full Board itself. I am thinking in the
12 area in which the company makes a report on form 7 which
13 can and does vary in substance with the report made on
14 form 6, which is the Workman's Report Claim form. In such
15 a situation, the Board has to continue to query discrep-
16 ancies in the two stories, continue to check details of
17 the two reports and this, in turn leads to considerable
18 correspondence, cross-checking and so on.

19 THE COMMISSIONER: Doesn't that happen
20 under Schedule 1?

21 MR. CRAIGS: It has been our experience
22 not to the degree that it happens under Schedule 2.

23 THE COMMISSIONER: I see.

24 MR. CRAIGS: I notice the railways made
25 use of the word "control" and in this context we think it
26 odd that the employer should wish to establish such
27 complete control over his employees that he would go to
28 the extent of insisting that they should remain in a
29 separate classification from other employers. It would
30 seem that where the spirit of the Act is based on



1 responsibility, this group of employers would like the other
2 group of employers to be more responsible than they are.
3 It seems odd too, that if I understand the submission
4 correctly, the railways in this case would want to incur
5 what are evidently two burdens of administrative costs.
6 If the question of control over employees is so important,
7 it seems odd that they should be willing to incur two levels
8 of costs.

9 I would also point out, Your Lordship, that
10 Sir William Meredith, who is constantly quoted through these
11 days, undoubtedly meant that Schedule 2 was experimental
12 and we must remember that this was initiated 50 years ago
13 and it was breaking entirely new ground and in this area,
14 it could well be that the initiator of the legislation
15 wanted to exercise some caution but we are now 50 years
16 later, and as you have already heard, sir, one jurisdiction
17 has already taken the initiative of removing certain people
18 in Schedule 2 into Schedule 1.

19 I would like permission to make another
20 observation, sir, and that also relates to the previous
21 submission. The speaker noted that there was a submission
22 from one of the railroad unions which did not comment on
23 this particular aspect in its brief to you. I would
24 respectfully point out that the mere omission of this is
25 not significant in the sense that it means that that union
26 acquiesces to the system. The Railway Union in question
27 is an affiliate of the Ontario Federation of Labour and
28 since we are the provincial voice which speaks for organized
29 labour, it is simply a matter that they did not want to
30 duplicate the sentiments expressed here in their own brief.



1 I am sure you will note that this has occurred elsewhere
2 and certain constituent members of the Canadian Manufacturers'
3 Association and so on, have probably done the same thing.

4 Those are all the comments I have, sir, in
5 this particular area. We can see no reason why Schedule
6 2 should continue to exist since collective responsibility
7 is the essence of the Act.

8 MR. ESTEY: I was looking at your page 26.
9 You comment on regulation number 2, the Board's exclusion
10 of certain employers from the Act. Would it be convenient
11 to deal with that now?

12 MR. CRAIGS: Yes, Mr. Estey. As noted on
13 page 26, farm operations have now recently been brought
14 within the jurisdiction of the Act and we were very, very
15 happy to see that. Our sentiments on the exploitation
16 of farm workers is well known and in this context, giving
17 them the protection that we think they richly deserve and
18 which was long overdue. We are puzzled, though, why, in
19 deciding to include farm occupations, it should have stopped
20 there, where there are 8 other - I beg your pardon, 7 other
21 classifications that still remain excluded. For example,
22 we find it difficult to understand why those people in
23 educational work which is an all-embracing description,
24 veterinary work and dentistry, should be excluded. One
25 wonders if anyone has ever been seriously injured by a
26 pair of snapping, artificial dentures.

27 THE COMMISSIONER: You still have the
28 right of action there.

29 MR. CRAIGS: Can you take action against
30 an inanimate object sir? Taxidermy is another one that



1 greatly puzzles us. It may be a dying industry or a dying
2 occupation, although I suppose there are some stuffed
3 shirts around still. We are just greatly puzzled by the
4 continued exclusion of these occupations. They seem so
5 minor as to cause great wonderment.

6 MR. ESTEY: Your request anyway is that
7 we find out why they are excluded?

8 MR. CRAIGS: Yes, sir.

9 MR. ESTEY: I just wanted to ask you, sir,
10 before you sit down, if you have any figures or conditions
11 in mind when you say that Schedule 2, where employers are
12 constantly contesting compensation cases and disclaiming
13 responsibility for accidents happening on their premises.
14 Do you have anything in particular in mind?

15 MR. CRAIGS: Perhaps I might take a moment
16 to explain, Mr. Estey, that, as a provincial organization
17 composed of 1,200 affiliates, all separate, equal and
18 also independent, it is extremely difficult for our organ-
19 ization to compile this kind of statistical data. In fact
20 I would go so far as to say it is impossible. The facil-
21 ities that are available to our affiliates vary enormously
22 as you can well understand. On the one hand we have an
23 affiliate of 16,000 members in Sudbury but further up the
24 pike, one might say, we might have an affilitate with 12
25 or 15, probably civic employees, so we have no uniform
26 standards of collecting data.

27 In direct answer to your question, Mr. Estey,
28 I would confess that most of the complaints are oral com-
29 plaints made to us, usually by telephone or at meetings or
30 occasionally by way of a letter. But we have been assured



1 by major railroad affiliates, and have over the years,
2 encountered considerable difficulty.

3 MR. ESTEY: That is the nub of your position?

4 MR. CRAIGS: That is the nub of our position.

5 MR. ESTEY: That if it weren't for that
6 element that the workman would have no interest where the
7 money came from?

8 MR. CRAIGS: No, sir.

9 MR. ESTEY: Except for this element of
10 difficulty of getting compensated because the employer
11 has the freedom that Schedule 2 affords him.

12 MR. CRAIGS: That is entirely the point,
13 sir.

14 MR. ESTEY: Well, we will inquire from the
15 Board about their records, as to the rate of appeals and
16 contests under that Schedule and perhaps that is what you
17 want to know.

18 MR. CRAIGS: Very much so.

19 THE COMMISSIONER: If there are cases in
20 which they are justified in opposing it may be unfortunate
21 if the compensation is delayed, but surely if there are
22 cases that they are justified in opposing, then the
23 workman can complain that he has been prejudiced by the
24 delay. They have a right, they contribute all the funds
25 and they surely have a right and an obligation if they
26 are satisfied that the claim is not justified, to put those
27 facts before the Board.

28 MR. CRAIGS: Well, sir, there is this
29 question of partiality and impartiality. A number of
30 submissions have dwelt on the integrity of the Board and



1 in such a situation where an employee feels that the ques-
2 tion of compensation is initially and completely in the
3 hands of the employer, I think it is quite human to accept
4 the proposition that the employee feels some partiality
5 against him.

6 THE COMMISSIONER: Of course, it isn't
7 though. The question of compensation is not in the hands
8 of the employer, it is in the hands of the Board from the
9 start. The Board decides when compensation will be paid.

10 MR. CRAIGS: Yes, sir, but I am talking
11 about the time of the incident, the actual moment of the
12 incident. In a situation like this, it is quite possible
13 for the employer to bring pressure to bear not only on
14 the workman himself who is injured but in the supervisory
15 personnel. It could be unstated but known policy.

16 THE COMMISSIONER: Those allegations are
17 made about employers in Schedule 1 too, that they do it in
18 order to keep their overall assessment down.

19 MR. CRAIGS: This is correct, sir. Our
20 question is, why the distinction between the two? If
21 Schedule 2 were abolished and everyone brought under the
22 aegis of Schedule 1, it would greatly relieve suspicions
23 that exist, and secondly it would maintain the integrity
24 of the Workmen's Compensation Board itself.

25 THE COMMISSIONER: It would reduce the
26 work of the Courts, substantially, too, with all these
27 actions.

28 MR. CRAIGS: With or without such actions,
29 I don't think our distinguished Bench is in danger of
30 unemployment.



1 THE COMMISSIONER: Well, thank you very
2 much.

3 MR. ESTEY: Now, the Ontario Forest Indus-
4 tries Association. I do not see them represented.

5 Then we have The Ontario Medical Association,
6 a supplementary brief dealing with the composition of the
7 Board.

8 Then the Ontario Mining Association. Mr.
9 Perry has three parts of his brief where comments are made
10 under this financial heading on the Board operations.

11 MR. PERRY: I will read from our brief, if
12 I may. I will start about the middle of page 5:

13 The Workmen's Compensation Board

14 The powers and jurisdiction of the Board,
15 as set out in Section 65 and 72 of the Act, confer on it
16 great authority. The detail as to the duties, the condi-
17 tions of appointment and the qualification as to prejudicial
18 financial interests of the Board members are also set out
19 in the Act. By implication and by tone of the wording
20 throughout the Act, the Board members are expected to be
21 the persons they are, men of ability and independence of
22 judgement. Since their function must be judicial, it
23 follows that the Board should be non-partisan and its
24 decisions should be free from the influence of prejudice
25 or partiality.

26 Alternately, if the Board is to represent
27 partisan views and be subject to outside influence of
28 interested parties and of political pressures, qualifica-
29 tion for appointment should be reconsidered when replace-
30 ments to the Board are to be named.



1 This Association favours the former type of
2 Board but it appreciates that political pressure may create
3 the latter.

4 In the non-partisan type of Board we would
5 suggest that there be three voting members of the Board,
6 of which two would constitute a quorum; that these members
7 be persons of proven ability, with judicial experience or
8 training and free from partiality and direct or indirect
9 interest. We also recommend that a medical expert be a
10 non-voting member of the Board to act in an advisory capacity.

11 If the partisan type of Board is to be con-
12 sidered, we suggest that it be constituted to have govern-
13 ment, employer and employee members; that the government
14 member be the chairman and that a quorum be three members,
15 one from each of the representative parties. Alternates
16 should be named to act as required. A medical expert,
17 acting in an advisory capacity, should also be a Board
18 member but non-voting.

19 THE COMMISSIONER: When you talk about a
20 government member, do you say he should be a member of
21 the government and paid, not by the fund, but by the gover-
22 nment?

23 MR. PERRY: No, I am suggesting he
24 would be paid as he is now.

25 THE COMMISSIONER: You mean he should be
26 appointed by the government?

27 MR. PERRY: Yes, I think the present
28 chairman is a good example.

29 THE COMMISSIONER: He is appointed by the
30 government?



1 MR. PERRY: That is right, and has that
2 very broad knowledge and has not been too intimately
3 connected with either of the others.

4 THE COMMISSIONER: When you refer to a
5 government member, you still intended he be an independent
6 commission appointment?

7 MR. PERRY: Yes, to be non-partisan.

8 THE COMMISSIONER: The government, apart
9 from passing the actual legislation and the fact there
10 has to be a report presented to the Minister of Labour
11 once a year, has nothing to do with the Board except when
12 you come to Commissions such as this, many recommendations
13 may be made there.

14 MR. PERRY: Yes.

15 THE COMMISSIONER: Well, that is all.

16 MR. PERRY: We strongly recommend that
17 when appointments are made to the Board, it should be
18 constituted so that it is distinctly either partisan or
19 non-partisan.

20 Debates in the House have included sugges-
21 tions that the Workmen's Compensation Board should report
22 directly to the House. We are opposed to any such proposal.

23 However, since the Board exercises powers
24 of trusteeship and judicial authority under the Act, it
25 would seem to be logical that close association with the
26 legal branch of the Government is desirable. This
27 Association, therefore, recommends that the Board report
28 to the Attorney General of the Province.

29 THE COMMISSIONER: At the moment he reports
30 the the Minister of Labour.



1 MR. PERRY: Yes. And maybe with the recent
2 change and the division within the Attorney General's office,
3 the new office might be a more appropriate place because
4 it is more in line with the function of the Attorney
5 General, rather than the function of the Minister of Labour.

6 THE COMMISSIONER: Thank you, Mr. Perry.

7 MR. ESTEY: We now proceed to the Ontario
8 Municipal Associations. I do not see anybody here repres-
9 enting them.

10 The Retail Council of Canada has already
11 discussed this question, Mr. Commissioner.

12 The Provincial Building and Construction
13 Trades Council have generally dealt with everything except
14 the composition of the Board.

15 Then, the United Steel Workers deal with
16 Schedule 2, but I do not see anybody here.

17 International Nickel, I understand, will
18 deal with one or two aspects that we are now on, tomorrow.

19 Those are all the submissions which we have
20 on this subject, unless someone is present, whom I have
21 overlooked. If not, I suggest, Mr. Commissioner, that
22 those which are not repetitive, that we follow the practice
23 of other topics and read them in now. Those which are
24 repetitive, with your permission, we will do no more than
25 point out that they re-state the same proposition as
26 somebody else.

27 THE COMMISSIONER: Did we do that in the
28 last lot we read out before lunch? Did we list the ones
29 we had not read but referred to?

30 MR. ESTEY: Yes, we touched on them all.



1 MR. GUTHRIE: Mr. Commissioner, in the
2 brief of the Automotive Transport Association of Ontario,
3 which was dealt with in part by Mr. Somerville this morning,
4 there is a reference on page 13 to the second injury fund.
5 I think it is the first we have heard about it. Mr.
6 Somerville did request that it be read into the record but
7 he had nothing to add while he was here, so I propose to
8 read from page 13 of that brief:

9 "In addition to the question of compensa-
10 tion paid to and on behalf of injured
11 workmen, it is submitted that the assess-
12 ment of costs against employers bears
13 re-examination at this time. Although
14 personal injury by accident may arise
15 out of and in the course of employment,
16 often a pre-existing injury or patho-
17 logic condition is the root cause of
18 the injury. Such a pre-existing condi-
19 tion may or may not be related to
20 earlier employment. It is submitted
21 that the amount of compensation payable
22 in such a case should be restricted
23 to that portion of the injury which
24 arises out of and in the course of
25 employment. Furthermore, the assess-
26 ment against a particular employer
27 in such a case should be restricted
28 to that proportion of the cost
29 attributable to employment by that
30 employer. In this connection, the



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1 suggestion is made that the operation
2 of the "Second Injury Fund" should be
3 formalized and that this fund should
4 be supplemented from other sources
5 to provide for payments made under
6 the Workmen's Compensation Act for
7 pre-existing injuries which are not
8 attributable to injuries sustained
9 in the course of employments."

10 Then I would like to refer, Mr. Commissioner,
11 to the brief of A & T Wrecking and Salvage Company Ltd.

12 THE COMMISSIONER: What is this matter of
13 the second injury?

14 MR. GUTHRIE: I presume Mr. MacDonald will
15 deal with that when he makes his submission on the part of
16 the Board, and he has just indicated that he will.

17 The next is A & T. It is in the form of a
18 letter and, starting at the second paragraph:

19 "From the Wrecking and Demolition
20 section of the Act we do have something
21 to say. Our rate to-day is 15% of our
22 total wages which is exorbitant to say
23 to say the least, when a third of this
24 amount will cover us with private
25 liability firms. The Department people
26 we have talked to advise us that this
27 cannot be helped, due to the high
28 percentage of injuries in this Trade.
29 We feel that some of the cause is as
30 follows:



1 'A' Other trades such as excavators,
2 Building Contractors, Salvage
3 yards, etc, are carrying out
4 demolition contracts and paying
5 their much lower rates. When an
6 accident happens and they are doing
7 demolition it is charged to the
8 Demolition Trade. To correct this
9 the Department should have an
10 inspector on staff, who would
11 inspect and investigate all cases
12 and jobs brought to his attention,
13 to make sure the actual contractor
14 doing the demolition is paying the
15 demolition rate and was prior to
16 any accident.

17 'B' Too many losses in the Department
18 collecting offices. We know of actual
19 cases where firms who have had a
20 bad accident history have quit
21 one business and started under a
22 new name just to write off their
23 passed history.

24 There is also a fact true to only
25 the demolition contracting trade,
26 that there is only a few large
27 firms who have been in business
28 under the same name for many years.
29 At the same time there has been
30 springing up a lot of one man



1 small operations with no assets
2 and no equipment, who are only
3 in business for a few months,
4 then quitting or changing their name.

5 Due to the collecting policy of
6 the Department the money these
7 firms owe has to be written off
8 and the accidents they have had
9 has to be paid for by the large
10 Demolition firms.

11 To correct these faults, we suggest the
12 following ideas be considered.

13 Compensation fees should be collected
14 monthly, not yearly. If a firm has a
15 15% rate, they should submit to the
16 Department at the end of each month
17 an amount equal to 15% of their total
18 wages on a two part form. This form
19 with the cheque should be taken to
20 his bank, the bank takes the money
21 and the form, receipts the form and
22 returns one copy of the form to the
23 contractor. This monthly receipt is
24 his proof at any time that his firm
25 is in good standing with the board
26 and is registered in the trade.

27 Building Permit departments in all towns
28 and cities should not issue a permit
29 covering any jobs where any demolition
30 will be done without first checking



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1 that the applicant for the permit is
2 registered in the trade and be able
3 to produce his monthly receipt to prove
4 he is in good standing.

5 These two ideas would result in the
6 Department getting all its money month
7 by month. It would weed out the fly
8 by night operations, but at the same
9 time help a new firm by letting it
10 pay as it goes along, not winding up
11 a year hence with a large Compensation
12 account which bankrupts the company.
13 We have just paid our account for this
14 year. It amounted to a cheque for
15 \$5400.00. Most of this money has
16 been accrued over the past year.
17 Incidentally in the same period we
18 believe our accident payments from
19 the board amounts to \$250.00. We
20 have been in the demolition business
21 for eight years. In this time the
22 Demolition Rate has gone up from
23 4.25% to 15% and rumour has it that
24 it will go up again this year. We
25 are not getting any incentive to keep
26 a good safety record."

27 THE COMMISSIONER: They have a good safety
28 record, but obviously other people in the demolition
29 trade are not having it, not the ones that are mentioned.
30 Salvage yards are getting a lower rate.



1 MR. GUTHRIE: It seems to be that most
2 of the assessments have to be written off and don't remain
3 in business as long.

4 THE COMMISSIONER: That is certainly true
5 although a lot of these contracting companies seem to
6 disappear quite quickly.

7 MR. GUTHRIE: Then, there is a submission
8 having to do with Neptune Meters Limited.

9 THE COMMISSIONER: Notice was sent to
10 these people, was it, of the program for today?

11 MR. GUTHRIE: I believe it was, sir.

12 Mr. Smart of this company, Neptune Meters
13 Limited, had had some correspondence or communication with
14 the Board and the Board has supplied us with a summary of
15 the situation which I might read.

16 THE COMMISSIONER: Where is Neptune Meters?
17 What are they complaining about?

18 MR. GUTHRIE: It is indexed under "N", a
19 single sheet. It is a very short one.

20 THE COMMISSIONER: Are you going to read
21 their submission first?

22 MR. GUTHRIE: Mr. Smart of the Company
23 wrote the Chairman, pointing out that he felt there was
24 double coverage when an injured employee received Workmen's
25 Compensation plus private insurance benefits when tempor-
26 arily totally disabled. That really is the extent of
27 the comment. The rest deals with what he was told to do
28 in terms of making a more detailed submission to the
29 Commission, et cetera. I mention it only so that it is
30 on the record that we have this reference to the possible



1 overlapping of benefits. It has been referred to earlier,
2 Mr. Commissioner.

3 The brief of Ontario Forest Industries
4 Association, page 3, Mr. Commissioner, dealing with
5 composition of the Workmen's Compensation Board:

6 "The Association is in agreement with
7 the sentiments expressed by Mr. Justice
8 Roach on the qualifications for the
9 office of Board member. At the time
10 of his report, his recommendation
11 regarding the number of Board members
12 was acceptable. In the intervening
13 period the volume of business has shown
14 a remarkable increase. The Association
15 recommends that the number of Board
16 members be increased to four by the
17 addition of an employer representative.
18 A man qualified for the office and
19 experienced in industry would, in
20 our opinion, be an asset in the
21 expanding operations of the Board."

22 THE COMMISSIONER: I suppose if an employer
23 representative, if I can think out loud, were appointed
24 to the Board, there is no reason why he should not act
25 in an independent manner just as the labour man is
26 expected to act in an independent manner. Labour is there
27 to interpret maybe some things that are peculiar to labour
28 to the other members of the Board while an industry
29 member might do the same. That is their recommendation.

30 MR. GUTHRIE: Yes. The next brief is



1 that of the Ontario Medical Association, which has submitted
2 a supplementary brief on the question of the composition of
3 the Board. It is a separate piece from them:

4 "COMPOSITION OF THE BOARD"

5 1. In our brief, submitted on August
6 16, we made no comment on the composi-
7 tion of the Board. We do so now because
8 we wish to have our opinion on the
9 record when this subject is considered
10 by the Commission.

11 2. Every employee who becomes the
12 responsibility of the Workmen's
13 Compensation Board requires medical
14 assessment and treatment. It seems
15 reasonable, therefore, that there
16 should be one member of the Board
17 who has knowledge and understanding
18 of the medical aspects of the
19 Board's responsibility.

20 3. Moreover, the Board acts as the
21 final appeal body. Acting in that
22 capacity it has a grave responsibility
23 to see that justice is done. The cases
24 coming before it are the more difficult
25 ones which have not been settled at
26 the lower levels of appeal. It seems
27 to us that decisions of the Board are
28 more likely to be fair if one member
29 of the Board is knowledgeable about
30 the medical aspects of the testimony



1 presented.

2 4. There has been a member of the
3 medical profession on the Board for
4 some twenty-five years. We believe
5 the present happy state of coopera-
6 tion which exists between the medical
7 profession and the Board is in no
8 small measure due to that circumstance.

9 5. We recommend, therefore, that the
10 composition of the Board include a
11 physician as one of its members."

12 THE COMMISSIONER: Of course, the objection
13 to having a fourth member of the Board is that there are
14 occasions when there might be a tie.

15 MR. GUTHRIE: I think it has been the
16 practice to try and have an uneven number of members.

17 THE COMMISSIONER: Was I not told originally
18 that the chairman was a medical man? The predecessor of
19 the present chairman wasn't I know, but was there a time
20 when he was a medical man?

21 MR. ESTEY: Do you know that, Mr. Kerr?

22 MR. KERR: No, sir, at one time we did have
23 a Vice-Chairman who was a doctor. I believe that is the
24 highest position any doctor has held.

25 THE COMMISSIONER: Is there not a medical
26 man on the Board at the moment?

27 MR. KERR: Yes, there is, the Commissioner
28 is the medical man.

29 THE COMMISSIONER: Who is the Vice-Chairman?

30 MR. KERR: The Vice-Chairman is Mr. Cauley.



1 MR. ESTEY: There are doctors chairmen in
2 other provinces, I believe.

3 MR. MACDONALD: Not medical doctors.
4 Doctor McLennan in Alberta is a doctor of law.

5 MR. ESTEY: All right, the next and last
6 one is United Steel Workers, on the question of Schedule 2.

7 MR. GUTHRIE: The brief of the United Steel
8 Workers, which has not as yet been presented at all, deals
9 with the elimination of Schedule 2 on page 5 and, although
10 that Union will be attending at a later date, it might be
11 as well, at least, to make reference to this submission
12 and whether it should be read into the record in full, at
13 this time, I leave to your judgement.

14 THE COMMISSIONER: Well, I think perhaps
15 is you tell us what it is, we will put it in the record.

16 MR. GUTHRIE: It is a long submission,
17 from pages 7 to 10 of the brief. As I read it, it is in
18 substantially the same terms as the submissions made by
19 the Ontario Federation of Labour to the effect that
20 employers under Schedule 2 of the Act tend to contest
21 claims more vigorously and that, for that reason, there
22 are inequities in the maintenance of the two separate
23 schedules. There are delays which occur under Schedule 2
24 and it is suggested that the Board's administrative costs
25 for Schedule 2 employers must be higher than for Schedule
26 1. I believe these are the same general points made by
27 the other labour group that suggested the elimination of
28 the Schedule. I think that is the substance of the sub-
29 mission.

30 THE COMMISSIONER: I wonder if any of the



1 Unions belonging to the United Steel Workers come under
2 Schedule 2.

3 MR. ESTEY: I checked the industries and
4 I could not find one that did, but it is possible that
5 they do.

6 THE COMMISSIONER: They will be able to
7 tell us that when they come.

8 MR. ESTEY: Right. If the Workmen's Com-
9 pensation Board representatives are ready to do so, we
10 would now like to hear their comments upon these two
11 items in the light of what we have heard. Is that con-
12 venient to you now, Mr. MacDonald?

13 MR. MacDONALD: Mr. Commissioner, I am
14 not sure what two items Mr. Estey is making reference to.

15 MR. ESTEY: Financial operations and
16 Board investments. Do you have a copy of the notice?

17 MR. MacDONALD: Yes, I wanted to be sure.

18 Under the heading of Investments:

19 AUTHORITY TO INVEST

20 Section 107 of the Act provides:

21 "In order to maintain the accident fund
22 ad provided by Section 84, the Board may
23 from time to time and as often as may
24 be deemed necessary include in any sum
25 to be assessed upon the employers and
26 may collect from them such sums as may
27 be deemed necessary for that purpose
28 and the sum so collected shall form a
29 reserve fund and shall be invested in
30 securities issued by the Province of



1 Ontario or in securities the payment
2 of which is guaranteed by it or in
3 securities issued by the Dominion
4 of Canada or in securities the payment
5 of which is guaranteed by it.'

6 Authority to invest funds, under the Work-
7 men's Compensation Act, Ontario, is relatively narrow in
8 comparison with other Canadian Boards. It provides for
9 investment in direct or guaranteed obligations of the
10 Province of Ontario or the Dominion of Canada. At the
11 present time the yield range on these securities is about
12 5 3/4 to 6 1/4 per cent.

13 In their brief, the Investment Dealers'
14 Association recommends that the Ontario Workmen's Compen-
15 sation Act be amended to provide for investments under the
16 Trustee Act of Ontario. Under the proposed arrangements,
17 with municipal bonds eligible for the portfolio, yields
18 on high grade issues - at present levels - would be about
19 6 1/8 to 7 per cent.

20 The fact that the Board's pension plan
21 investments show a higher yield than the accident fund
22 investments is due mainly to a higher proportion of
23 relatively recent investments with higher yields. It is
24 not the result of diversity as the brief seems to imply.
25 New investments in 1966, under the broader authority
26 provided by the amended Superannuation Fund Regulation,
27 show higher interest earnings than could be obtained in
28 the accident fund.

29 THE COMMISSIONER: The superannuation fund
30 does not come under the same restrictions as this provision.



1 MR. MACDONALD: They are permitted under
2 that fund to invest in those things which are eligible
3 under the Ontario Pension Benefits Act, which, actually,
4 is broader than the Trustee Act.

5 THE COMMISSIONER: Broader than the Trustee
6 Act?

7 MR. MacDONALD: Yes, sir.

8 THE COMMISSIONER: I thought it was not
9 the Trustee Act they were talking about, it was investments
10 with trust companies, or is that identical?

11 MR. ESTEY: No, it is not, sir. I think
12 the high-water mark - and Mr. MacDonald might set us
13 correct - is the Canadian and Foreign Insurance Act,
14 section 43, which allows the companies licenced federally,
15 which includes some trust companies, to operate their
16 investments under that fund, to issue common shares and
17 20 year dividend and 5 per cent of the money can be put
18 in anything, as I understand it.

19 MR. MacDONALD: That is right.

20 MR. ESTEY: And Manitoba comes quite close
21 to that as I can read their regulations.

22 MR. MacDONALD: That is right, yes.

23 MR. ESTEY: I don't understand that last
24 sentence you read, Mr. MacDonald. It seems to contradict
25 the one before.

26 MR. MacDONALD: What we are trying to do
27 here is just set the record straight. In the brief it
28 seems to suggest that our superannuation fund has a better
29 yield by reason of the type of arrangement than they are
30 recommending. It is just an accident that it happens to



1 be higher because the fund is not as old and most of the
2 investments in it are more recent.

3 MR. ESTEY: I take it you do agree that
4 if the investment dealers' proposal were implemented, you
5 could get a higher yield in today's market condition than
6 you are allowed under the statute?

7 MR. MacDONALD: Very definitely.

8 MR. ESTEY: Of course you might lose too.

9 MR. MacDONALD: It certainly places a
10 greater obligation on the Board.

11 OTHER CANADIAN BOARDS

12 In comparison with other provinces, the
13 Ontario Workmen's Compensation Act is the most restrictive
14 in respect of investments. In all provinces except
15 Ontario and British Columbia, legislation empowers the Boards
16 subject to a few minor qualifications, to invest in secur-
17 ities authorized for the investment of trust funds. In
18 British Columbia, investments are confined to securities
19 issued or guaranteed by the Dominion of Canada or any
20 Province of Canada.

21 TRUST FUND INVESTMENTS

22 The Provincial Trustee Acts provide for a
23 rather wide variety of eligible investments for related
24 trust funds. The range covers securities issued by senior
25 government bodies down to common shares of certain corpora-
26 tions. Some provinces include securities which assist in
27 financing specific local projects such as hospitals,
28 schools, and public utilities.

29 The Trustee Act of Ontario is, in general,
30 more restrictive than the average conditions defined by



1 the other provincial acts. Eligible investments require
2 a substantial degree of security. The provision relating
3 to "first mortgage, charges or hypothecs upon real estate
4 in Canada" is possibly the most liberal item permitted
5 under the Act. It is also possible that "debentures --
6 secured by or payable out of rates or taxes levied under
7 the law of any province of Canada" could cover rather low
8 quality investments. Otherwise, the investments covered
9 under the Act would conform to high grade standards.

10 Life insurance companies subject to the
11 Canadian and British Insurance Companies Act have much
12 wider investment powers than trust funds in most provinces.
13 Pension plans in Ontario, under the Pension Benefits Act
14 1965, are permitted to invest in a wider range of securi-
15 ties than is permitted under the Trustees Act of Ontario,
16 but they are more restricted than life insurance companies.

17 THE COMMISSIONER: Then your superannuation
18 fund comes under the pension benefits.

19 MR. MacDONALD: Under the latter one.

20 MR. ESTEY: How much is in the fund to
21 start with that we are talking about.

22 MR. MacDONALD: We are talking about a
23 fund in excess of \$200 million. I can give you the exact
24 figure.

25 MR. ESTEY: \$207 million, I saw in one
26 report.

27 MR. MacDONALD: We have investments at
28 \$238 million as of December 31st, 1965.

29 MR. ESTEY: The Board actually invests
30 that by buying on the market through banks or other



1 security dealers, any securities you want?

2 MR. MacDONALD: We buy, normally, through
3 the various security dealers.

4 MR. ESTEY: And that is conducted through
5 your department of the Board, I take it.

6 MR. MacDONALD: It is, yes.

7 THE COMMISSIONER: How is it there is a
8 difference between 300 million and 238 million.

9 MR. MacDONALD: 238 million are the
10 investments in Schedule 1, we have investments in Schedule
11 2 of four and a half million and we have investments in
12 our own staff superannuation fund of \$16 million.

13 THE COMMISSIONER: Then it doesn't amount
14 in all to \$300 million?

15 MR. MacDONALD: No, sir, I said in excess
16 of \$200 million when I first answered the question.

17 THE COMMISSIONER: I thought you said
18 \$300 million.

19 MR. MacDONALD: No, in excess of \$200
20 million.

21 MR. ESTEY: You have cash in addition to
22 that, I take it.

23 THE COMMISSIONER: What have you got in
24 investments, a supervisory committee, or something?

25 MR. MacDONALD: We have an Investment
26 Committee composed of the Assistant Comptroller, the
27 Treasurer and myself. They are all here today.

28 MR. ESTEY: In your annual report, the
29 balance sheet, I take it, the Schedule 1 Accident Fund, is
30 the fund you are talking about?



1 MR. MacDONALD: Yes, that is right.

2 MR. ESTEY: I am looking at page 8 of the
3 annual report.

4 MR. MacDONALD: That is right.

5 MR. ESTEY: And below that, Schedule 2,
6 would those be the deposits which the Schedule 2 employers
7 place with you?

8 MR. MacDONALD: Yes, there are two types
9 of deposits in Schedule 2. There is the deposit from
10 which current payments are made on account of current
11 claims and in the case of some Schedule 2 employers, they
12 have provided a deposit for the payment of future pension
13 payments in addition to the current claims.

14 MR. ESTEY: And then you have in addition
15 to your securities invested in the fund, you have short-
16 term deposits which, I suppose, are notes purchased on
17 the market or trust company certificates so that you have
18 a liquid part of the fund which you can draw upon to meet
19 your day-to-day requirements.

20 MR. MACDONALD: Basically what happens
21 is that our assessment period falls between May and August
22 the 30th of a year. During the time we must cover the
23 dry months of the year until the next assessing period
24 which covers the time from October through to April the
25 following year. So that during the time of our income
26 period, we are actually making short term investments
27 which will mature during the period as between September
28 1 and April 30th the following year. They will, in fact,
29 cover the disbursements of those months.

30 THE COMMISSIONER: Where you have to



1 capitalize a pension claim for someone coming under
2 Schedule 2, what is the practice? Do you draw out from,
3 do you get that money from the employer in Schedule 2 and
4 put it in a separate fund or is the employer in Schedule
5 2 allowed to set up his own reserve for that purpose?

6 MR. MacDONALD: There are sections of the
7 Act which provide for either approach and we normally
8 leave it to the Schedule 2 employer to make his selection
9 of which way he prefers to do it. If we encountered a
10 situation where we felt there would be a difficulty in
11 being certain that we would have the money on a continuing
12 basis, we might insist on the deposit being made.

13 THE COMMISSIONER: That is number 2. You
14 say there are 2, one for current and another second one
15 is, I take it, for employers that you feel might not be
16 financial able to take care of whatever the claim might
17 be unless it was taken care of at this time, is that
18 right?

19 MR. MacDONALD: That is right, sir.

20 MR. ESTEY: Looking at page 8 of the 1965
21 annual report, I see there is a note, "Administration
22 expenses recoverable from Schedule 2 employers", which
23 is \$650 odd thousand dollars. You heard some comments
24 today about the administration costs of Schedule 2. How
25 is that determined?

26 MR. MacDONALD: We take our total adminis-
27 tration expenses and exclude from that those things from
28 which Schedule 2 does not benefit. Specifically, for
29 instance, there is no requirement that we audit their
30 payrolls. Therefore, the expenses of the audit department



1 are removed from the calculation. Having taken those
2 things out, we determine the relationship between overall
3 expenses and disbursements and we charge Schedule 2
4 accordingly.

5 MR. ESTEY: It is shared proportionately
6 to the payments of Schedule 1 and Schedule 2 for compensa-
7 tion benefits.

8 MR. MacDONALD: That is correct.

9 MR. ESTEY: In the administration of
10 Schedule 2, including appeals, is there any more adminis-
11 tration attendant upon Schedule 2 that Schedule 1 employers
12 in the Board's experience?

13 MR. MacDONALD: No, sir.

14 MR. ESTEY: On the frequency of appeals, do
15 you have any comments on that?

16 MR. MacDONALD: Actually, we have not made
17 any specific calculation of the percentage of appeals and
18 therefore, I could not actually report on that. Certainly
19 our impression, as reported by the various operating
20 departments, is that there is not any greater problem with
21 Schedule 2 than there is with Schedule 1. I think there
22 are employers in both Schedules who are more careful about
23 the amount of investigation they do themselves about a
24 claim.

25 MR. ESTEY: Which I take it is part of the
26 administration of the Act?

27 MR. MacDONALD: It does not add to our
28 administration costs.

29 MR. ESTEY: No, but it is part of the
30 responsibility of the community in running this Act that,



1 as well as the Board, the employer and the doctor have to
2 investigate claims under the Act if the process is to
3 function?

4 MR. MacDONALD: That is right.

5 MR. ESTEY: I take it whether or not there
6 are two Schedules is a matter of policy on which you don't
7 care to make any comment?

8 MR. MacDONALD: The Board has no submissions
9 to make on that.

10 MR. ESTEY: Getting back to this investment
11 matter for just a moment, is there any criticism or any
12 real demerit to the suggestion that this fund be released
13 from restrictions of its present investment terms and
14 perhaps put in the half-way position between here and the
15 Manitoba statute; that is, you take something like the
16 Alberta Statute which allows the investments to be of
17 trustee nature but not as broad as the Pension Benefits
18 Act.

19 MR. MacDONALD: Yes, we believe there is
20 some merit in that. I believe we should point out the
21 one possible problem which has been a matter of concern
22 previously, and that is the extent to which we might have
23 pressure brought to bear on us to purchase the securities
24 of certain municipalities, related as we are to various
25 authorities.

26 MR. ESTEY: A kind of patronage dividend -
27 you have to put some of the money back where it comes from?

28 MR. MacDONALD: I think this type of
29 pressure will be put on any investing institution. As I
30 have commented, this would place a greater obligation on



1 the Board in its financial management but I certainly
2 would not want to oppose it being established on that basis.

3 MR. ESTEY: While we have you available,
4 Mr. MacDonald, do you have any comments as to the suggestion
5 that the annual report might show more of the nature of the
6 securities held or the earnings of the fund in greater
7 detail than you set them out? Is that practical or desir-
8 able?

9 MR. MacDONALD: I think it was clarified
10 in the questioning that what was being asked was not
11 merely a detailing of the investments held. Certainly we
12 would have no objection to doing that. I have a comment
13 here, later, on the annual report, which I will read into
14 the record.

15 MR. ESTEY: All right, I am getting ahead
16 of you. Do you want to read that in now?

17 MR. MacDONALD: Yes. Our comment here
18 is very short:

19 The Board believes in full disclosure of
20 all information and, therefore, provides all interested
21 parties with any financial or statistical data which has
22 significance. No organization in dealing with the Board
23 has ever indicated any concern to us that additional
24 information would be required. We would, therefore, be
25 very pleased to consider any requests for further reporting.

26 I think in the questioning there was the
27 question of the matter of how employers can investigate
28 the statements of actuaries in providing the Board with
29 recommendations and actually influencing the Board to
30 make its decisions, about reserves. This is a rather



1 difficult area. We purchase the best advice we can get.
2 I am sure there can be a difference of opinion between
3 actuaries. In effect what we have said to trade associa-
4 tions in the past when they have raised this particular
5 point is that we would be pleased, if you want to hire an
6 actuary and have him make certain calculations and hear
7 what he has to say.

8 THE COMMISSIONER: Your Board would still
9 sit, I suppose, after you got the actuaries' advice and
10 either restrict your investments to that amount or make
11 it a little more.

12 MR. MacDONALD: The Board has the respon-
13 sibility of making a decision and I am not suggesting that
14 in every case we follow blindly the advice of an actuary.

15 MR. ESTEY: One last question which
16 somebody raised to-day: They raised the relevance now,
17 in this day and age, of regulation number 2, excluding --
18 I forget the Section of the Act -- giving the Board the
19 power to exclude certain employers from the application
20 of part 1 of the Act which, in effect, is to take it right
21 out of the Act, and you have taxidermy and embalmers --
22 rather narrow activities. Is there any reason for that
23 section remaining in?

24 MR. MacDONALD: The Board does not have
25 a formal submission to make on this particular point. In
26 practice, gradually over the last few years, the various
27 remaining restrictions have been lifted. Our position is
28 that we are pleased to extend the protection of the Act to
29 industries when government authorities, in their wisdom,
30 decide that it is wise to do so. I don't think we really



1 have any official comment to make on that.

2 MR. ESTEY: That regulation has been
3 outstanding for some time.

4 MR. MacDONALD: Yes, it has gradually been
5 a question of eliminating people.

6 THE COMMISSIONER: Gradually whittling it
7 down.

8 MR. MacDONALD: There is one significant
9 group not listed there and that is all the financial
10 activities - banks and insurance companies.

11 THE COMMISSIONER: What about this second-
12 ary fund? What does it do?

13 MR. MacDONALD: You mean the second injury
14 fund?

15 THE COMMISSIONER: Yes, the second injury
16 fund.

17 MR. MacDONALD: The Board does have a
18 second injury fund which is basically an enhancement on
19 reserve and it is used where there has been a pre-existing
20 condition which has had the result of making the permanent
21 disability arising out of the second injury greater than
22 it otherwise would have been. At the moment, the use of
23 that reserve is restricted to a sharing of the permanent
24 disability award itself, not of the total temporary com-
25 pensation that precedes it.

26 THE COMMISSIONER: Start all over again.
27 You are going a little too fast for me to understand. It
28 is basically a reserve for what purpose?

29 MR. MacDONALD: To share the burden where
30 there is a pre-existing condtion which results in the



1 permanent disability that arises out of the second accident
2 being greater.

3 THE COMMISSIONER: Share the burden with
4 whom?

5 MR. MacDONALD: Shares the burden between
6 the classification of the employer where the accident
7 occurred and all of Schedule 1. An example would be a
8 man who has already lost the sight of an eye and he loses
9 the sight of the second eye. He is then 100 per cent
10 disabled whereas the loss of one eye only would be 16 or
11 18 per cent, depending whether it was annucleated. In
12 that case the man would be compensated at the rate of 100
13 per cent but only 18 per cent would be charged to the
14 employer's group where the accident occurred. 82 per cent
15 would be charged to the second injury reserve which is
16 maintained on a contributing basis by all employers in
17 Schedule 1. We had a reserve for that purpose as at
18 December 31st, 1965 of \$1,161,000.

19 MR. ESTEY: Is that shown somewhere in the
20 balance sheet?

21 MR. MacDONALD: Yes, it's on the liability
22 side, under Accumulated Provisions, second injury, the
23 third one down.

24 MR. ESTEY: Yes, I see, thank you. How is
25 that built up?

26 MR. MacDONALD: It is built up by an assess-
27 ment on all employers in Schedule 1 and I believe last year
28 was half of one per cent.

29 MR. ESTEY: Earmarked for that fund.

30 MR. MacDONALD: Yes.



1 MR. ESTEY: How do you exclude all the
2 offices that you see downtown, around Toronto - do you
3 see them in this regulation too?

4 MR. MacDONALD: The office employees for
5 industries which are covered under the Act, are covered in
6 the same manner as the factory or any other employee. It
7 is only the employees of financial institutions which is
8 banks and insurance companies, or lawyers' offices and
9 doctors' offices -- this is the type of total industry --
10 not just the office but the total activity is excluded.

11 THE COMMISSIONER: They can come in if
12 they want?

13 MR. MacDONALD: They are all eligible to
14 become covered by application, and many of them have.

15 MR. ESTEY: I could not find them and that
16 is why I asked. I don't see them in that regulation and
17 I wondered if there was some other place.

18 MR. MacDONALD: I think they are actually
19 interpreted to be in the educational one which gets to be
20 rather difficult. They mention dentists, but they don't
21 mention doctors.

22 MR. ESTEY: Somebody from the O.M.A. told
23 us that the doctors availed themselves of this very widely.

24 MR. MacDONALD: I think there was a period
25 when they did but I feel that more and more, as I look
26 at the provisions of section 9 of the inability to sue when
27 they are injured, that they have been withdrawing.

28 MR. ESTEY: Thank you, Mr. MacDonald.

29 THE COMMISSIONER: Just going back to this
30 question raised by the Automotive Transport Association:



1 How much an injury, where there is a pre-existing injury,
2 should be assessed against the employer and that the
3 second injury fund should be used for that purpose, but
4 you say it is used for that.

5 MR. MacDONALD: Yes, but restricted to
6 permanent disability awards. We have a committee working
7 on this particular subject right now to make a study as
8 to the total problem, and we expect there will be modifi-
9 cations in the procedures, which will extend the use of
10 the second injury fund in all cases where there is a
11 pre-existing condition.

12 THE COMMISSIONER: It is restricted to
13 partial disability?

14 MR. MacDONALD: No, to permanent disability.
15 And the sharing is in the permanent disability award only,
16 not in the costs prior to that.

17 THE COMMISSIONER: Do you think this
18 suggestion, then, refers to the partial or temporary?

19 MR. MacDONALD: I think that means all,
20 rather than specified conditions. I think they are also
21 recommending that the contributions come from other
22 sources than industry -- the community generally.

23 THE COMMISSIONER: Are they recommending
24 that?

25 MR. ESTEY: Yes, they are saying this is
26 a social measure. On that point, is it limited to pre-
27 existing conditions in respect of which compensation
28 benefits were paid, or any pre-existing condition?

29 MR. MacDONALD: Any pre-existing condi-
30 tion that is there with the exception of this very difficult



1 area of things like arthritis - the type of condition
2 which it is difficult to see. There has been no problem
3 in this area where we are talking about an amputation or
4 a limitation where somebody loses an eye or diabetes which
5 results in a greater result as far as P.D.'s.

6 There is an area which is hazy where the
7 pre-existing condition is very difficult to assess.

8 MR. ESTEY: Thank you.

9 THE COMMISSIONER: Is that all?

10 MR. ESTEY: That is all.

11 THE COMMISSIONER: Thank you. Are we to
12 hear from Mr. Kerr on anything?

13 MR. ESTEY: I take it not, sir. That is
14 the submission of the Board on these two items.

15 MR. MacDONALD: There are a number of
16 other comments I have about assessments.

17 THE COMMISSIONER: The only thing I had
18 in mind was this. If this is going to terminate this
19 numbers 2 and 3, or do we have to sit tomorrow for any
20 purpose?

21 MR. ESTEY: We have to because we have
22 three people to hear from.

23 THE COMMISSIONER: In that event, can we
24 ask you to return in the morning, Mr. MacDonald?

25 MR. MacDONALD: Certainly.

26 THE COMMISSIONER: We might have some
27 overnight thoughts about some more of it, too.

28 Well, we will adjourn until 10:00 o'clock
29 tomorrow morning.

30 --- At 4:50 the Hearing adjourned until 10:00 a.m., on
Thursday, October 6, 1966.

PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

**HEARINGS HELD AT
TORONTO, ONTARIO**

**VOL. NO.
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EXHIBITS

17	Letter dated September 26, 1966, addressed to Messrs. Robins and Robins from the Workmen's Compensation Board of Alberta	1248
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ERRATA

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Volume 3: Index and page 1105:
Exhibit 17 should be renumbered Exhibit 16.



Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O., 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice W.A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on
Thursday, 6 October, 1966.

APPEARANCES:

W.Z. Estey, Q.C.)

and)

H.D. Guthrie)

Counsel to the Commission

C.R. Osler, Q.C.)

J.G. Goodwin)

International Nickel Co.
of Canada, Ltd.

J.A. Black

Investment Dealers Assoc.

K.B. Paulin)

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R.H. Nicholls)

T.C. Cox)

Ontario Federation of
Constructions Associations.

J. Sawyer

Ontario Medical Assoc.

A.G. MacDonald

Workmen's Compensation Bd.

W. Kennedy

International Union of
Mine, Mill & Smelter Wkrs.

R. Koskie

Labourers' International
Union of North America,
Local 183.



1 There is great variation in the invest-
2 ment powers of the different provincial Workmen's
3 Compensation Boards. After Ontario the powers of the
4 British Columbia Workmen's Compensation Board are the
5 most restricted, but even in that province certain
6 municipal bonds are approved investment; .

7 THE COMMISSIONER: You say certain
8 municipal bonds. All municipal bonds aren't. What
9 municipal bonds are?

10 MR. BLACK: I refer to Exhibit 2.

11 THE COMMISSIONER: The reason I ask is
12 that the chief query put very mildly by Mr. MacDonald
13 were you here yesterday?

14 MR. BLACK: No, I wasn't, sir.

15 THE COMMISSIONER: About a change was
16 that there is always the possibility of some
17 political pressure where municipalities are involved
18 with particular municipalities pressuring the Board
19 perhaps to invest in those securities. That is the
20 reason I am making this enquiry, so if you answer
21 this question, perhaps that will be all right.

22 MR. BLACK: The Workmen's Compensation
23 Board in British Columbia does invest in municipal
24 securities of that province. The municipal securities
25 do have a free market in British Columbia and find
26 their way into other investment portfolios throughout
27 the country.

28 THE COMMISSIONER: My query was, I
29 understood from what you stated, that it was a limited
30 power in certain municipal securities, you said. My



1 query was: Is there a restriction on the municipalities
2 in which they are allowed to invest?

3 MR. GUTHRIE: Could you refer us to the
4 schedule about British Columbia's Act, Mr. Black? It
5 is in your brief and the section is, I think, set out.

6 MR. BLACK: Section 2, the Workmen's
7 Compensation Acts of all the provinces are set out
8 in Exhibit 2. British Columbia. Shall I read the
9 whole thing? It is fairly set.

10 THE COMMISSIONER: Perhaps you can read
11 it and tell me.

12 MR. BLACK: "A surplus in the
13 Accident Fund is to be invested and re-invested in
14 direct or guaranteed obligations of Canada or any
15 province of Canada, with preference to be given
16 obligations guaranteed by the Province of British
17 Columbia and incurred in connection with the construct-
18 ion of schools, sewers and domestic water systems --

19 THE COMMISSIONER: What about municipal
20 bonds?

21 MR. BLACK: These are presumed to be
22 municipal bonds, sewers and domestic water systems.

23 THE COMMISSIONER: Will you read the
24 first part again, please?

25 MR. BLACK: A surplus in the Accident
26 Fund --

27 THE COMMISSIONER: Just about municipal
28 bonds.

29 MR. BLACK: With preference to be given
30 obligations guaranteed by the Province of British



1 Columbia and incurred in connection with the construct-
2 ion of schools.....

3 THE COMMISSIONER: You call those
4 municipal bonds?

5 MR. BLACK: Yes.

6 THE COMMISSIONER: Guaranteed by the
7 Province?

8 MR. BLACK: Guaranteed by the province.

9 THE COMMISSIONER: And is it any wider
10 than that? Any other municipal bonds?

11 MR. BLACK:..and domestic water systems
12 and municipal works under The Public Schools Act....
13 the Province guarantees the school bonds, "The Public
14 Schools Construction Act, 1953, similarly, the Improve-
15 ment Districts Assistance Loan Act...." Now, they
16 can or cannot be guaranteed, and the "Municipalities
17 Assistance Act". They, I believe, are all guaranteed.

18 THE COMMISSIONER: When you say
19 municipal bonds, those are the municipal bonds you are
20 referring to. There is no power to invest in
21 municipal bonds authorized by the municipalities them-
22 selves?

23 MR. BLACK: The Act does not state that
24 they can do so.

25 THE COMMISSIONER: Thank you.

26 MR. BLACK: In the most liberal province,
27 Manitoba, preferred and common shares of Canadian
28 companies are approved investments if they meet
29 certain dividend requirements. The relevant provisions
30 of the various provincial Acts are annexed (Exhibit 2).



1 In Canada, trust funds are generally
2 subject to two types of control. In the first place
3 the types of investment approved for the different
4 trust funds are prescribed by statute. In the second
5 place there are annual government inspections of the
6 investments of the trust funds. Insurance company
7 investments are a good example of trust fund control.

8 THE COMMISSIONER: Maybe Mr. MacDonald
9 could answer this. If the Act were changed to allow
10 investment under the Trustee Act, would there be
11 trust fund control of your investments?

12 MR. MacDONALD: The Act requires an
13 element of control, yes.

14 THE COMMISSIONER: It would exist?

15 MR. MacDONALD: Yes.

16 MR. BLACK. Life insurance companies
17 subject to the Canadian British Insurance Companies
18 Act, R.S.C. 152, Ch. 32, have a combined investment
19 of about 12 billion dollars. These insurance
20 companies have very wide investment powers encompass-
21 ing not only Government bonds and bonds secured by
22 mortgage on real estate but also shares of companies
23 meeting certain requirements as well as other forms
24 of investment (Exhibit 3). The safeguard provided by
25 the Act is the yearly inspection of the companies'
26 books by the Federal Superintendent of Insurance.
27 In 1965 the average net rate of investment income of
28 these insurance companies varied from a low of 4.99
29 percent to a high of 6.28 percent. In terms of size
30 and number the majority were over 5.65 percent.



1 In Ontario the Pension Benefits Act 1965
2 (in the regulations O.R. 103/66) defines the investment
3 powers of pension schemes in the province. These
4 regulations, in part borrowed from the Canadian and
5 British Insurance Companies Act, allow investment in -

6 Bond type securities where federal and
7 provincial credit is directly or indirectly
8 involved,

9 Preferred and common shares of companies
10 meeting certain dividend requirements,

11 Real estate and leases on certain con-
12 ditions,

13 Mutual funds and investment companies,
14 etc.

15 (Exhibit 4)

16
17 Figures showing the total investment of Ontario pension
18 funds and their average net rate of investment income
19 are not available. However, trust companies administer-
20 ing some of these funds report that there are two main
21 types of pension fund investments. The majority put the
22 bulk of their investments either in bonds or in
23 common stocks and mortgages. In investment portfolios
24 where the bonds predominate, the average yield has been
25 3-1/2 to 4-1/2 percent yearly. In investment port-
26 folios where common stocks and mortgages predominate
27 the average yield has been over 5 percent yearly.
28 The pension plan covering members and employees of
29 the Workmen's Compensation Board operates under the
30 Ontario Pension Benefits Act 1965. This fund has a



1 total investment of over \$16,000,000 and the average
2 yearly yield has been 4.95 percent.

3 Under the Ontario Trustee Act, trustees
4 are not permitted to invest in equities. However,
5 trustees are permitted to invest in Government bonds,
6 provincial bonds, municipal bonds, first mortgages on
7 real estate in Canada, and certain other restricted
8 types of investment (Exhibit 5).

9 THE COMMISSIONER: What are the other
10 types of restricted investment? Is that in Exhibit 5?

11 MR. BLACK: Yes.

12 THE COMMISSIONER: Guaranteed investment
13 certificates in any trust company. All right, thanks.

14 MR. BLACK: The current range of bond
15 yields is:

16 Government of Canada 5-3/4 - 6%

17 Provincials 6-1/8 - 6-3/4%

18 High Grade municipals 6-1/2 - 7%

19 If trustee investments were authorized
20 for the Workmen's Compensation Board Accident Fund,
21 then a proportion of the funds could be transferred
22 from Canada and Ontario bonds to other provincial and
23 municipal bonds. If a quarter of the Fund were to be
24 transferred to municipal bonds, approximately a 50
25 percent increase in average yearly yield would result.
26 This would increase the income from the investments by
27 about \$375,000 per year, which is about \$100,000 more
28 than is currently spent by the Workmen's Compensation
29 Board on rehabilitation yearly.

30 The restricted scope of trustee invest-



1 ments could not jeopardize the sacred trust character
2 of the Workmen's Compensation Board's accident fund.
3 A further guarantee of the proper administration of
4 accident fund investment is the yearly examination by
5 the Provincial Auditor of the accounts of the Board
6 as required by Section 78 of the Act.

7 Experience with other trust type funds
8 show that with yearly inspections it is possible to
9 maintain safeguards while allowing a broader range of
10 investments than is presently allowed by the Workmen's
11 Compensation Act. Therefore, it is respectfully sub-
12 mitted that the Ontario Workmen's Compensation Act
13 be amended so as to permit investments authorized
14 for trustees under the Trustee Act of Ontario.

15 THE COMMISSIONER: You are not recommend-
16 ing that it be widened to the extent that investments
17 can be made in equities?

18 MR. BLACK: No.

19 THE COMMISSIONER: Thank you very much,
20 Mr. Black. Have you any questions, Mr. Guthrie?

21 MR. GUTHRIE: I just wondered, Mr.
22 Black, if you cared to give us any further comment
23 on the point raised by the Commissioner and also
24 referred to here yesterday on the subject of municipal
25 bonds authorized by the Trustee Act of Ontario, but
26 not guaranteed by the Province. In your view, are
27 they of a quality that might be subject to any
28 difficulty in the Board's operations or the handling
29 of its investments?

30 MR. BLACK: No, I think that the nature



1 of municipal securities in Ontario is such that they,
2 first of all, do not become involved in investing,
3 for example, in sinking funds. Outside of Metropolitan
4 Toronto and no other municipalities in Ontario issue
5 sinking fund bonds and, therefore, most of the
6 financing of the municipalities is done on a yearly
7 basis on what is called serial issues so the bonds
8 are paid over a period of time ranging anywhere from
9 one to twenty years. Therefore, it is a straight
10 administration problem on a yearly basis and is budgeted
11 for.

12 THE COMMISSIONER: Not knowing anything
13 about it, does that amount to the same thing as if they
14 had established a sinking fund and paid them all off
15 at the end of twenty years? In fact, they pay off
16 some each year.

17 MR. BLACK: It, theoretically, amounts
18 to the same thing.

19 THE COMMISSIONER: Except their debt
20 might be greater than it would be otherwise?

21 MR. BLACK: They would probably be
22 required to have an actuarial retirement of the
23 sinking fund bonds if they instituted one to retire
24 100 percent by maturity, but, in fact, there were
25 sinking fund bonds issued by most municipalities prior
26 to the depression years. Unfortunately, the municipal-
27 ities then could invest in other municipalities in
28 Ontario to satisfy their sinking fund needs. But,
29 other municipalities went into default and, therefore,
30 the sinking fund went into default.



1 MR. GUTHRIE: Is that no longer possible
2 under the legislation?

3 MR. BLACK: Now it is no longer possible
4 under the legislation because under a very restricted
5 means, a municipality could issue sinking fund bonds
6 but it is administered by the province and the province
7 simply guarantees a return of investment and the
8 guarantee is based on the average yield of their out-
9 standing debentures and that currently is around 3-3/4
10 percent. So, when a municipality today is faced with
11 issuing debentures representing a cost of anywhere
12 from 6-1/2 to 7 percent it can only get a 3-3/4
13 percent return on its sinking fund if they so chose
14 to do this, and, to my knowledge, there are no
15 municipalities in Ontario that have taken advantage
16 of this.

17 There are certain municipalities who can
18 obtain a private bill which would allow them to
19 administer their own sinking fund, as Metropolitan
20 Toronto has now. The City of Hamilton and the City of
21 Ottawa and the Township of Toronto are three other
22 bodies that have these private bills. The City of
23 Hamilton exercised it once and have returned to the
24 serial operation and have not gone back to the sinking
25 fund.

26 There is another interesting aspect now
27 which might be taken into account. The Canada
28 Pension moneys, which the Province of Ontario
29 receives, are designated by the Province of Ontario
30 to service the debts for schools, school bonds and



1 universities. Now, school bonds issued in Ontario
2 are issued by the municipality under its own name.
3 This means that if the municipality went into default,
4 then the school bonds would go into default automatically.
5 So that the Province of Ontario is faced with a default
6 situation on pension moneys belonging to the Canada
7 Pension Plan and I think that the Province would be
8 faced with a situation that would probably require them
9 to take over the administration of the municipality
10 to the point that they would re-institute the pay-
11 ments and eliminate this default situation.

12 MR. GUTHRIE: But, as yet, there is no
13 provision for a guarantee to meet that problem?

14 MR. BLACK: None of the municipality
15 bonds in Ontario are guaranteed by the Province.

16 MR. GUTHRIE: Mr. Black, at the top of
17 page 3 of your brief, you comment that if trustee
18 investments were authorized, then a proportion of the
19 funds could be transferred from Canada's and Ontario's
20 to the bonds of other provinces and municipalities.
21 The Trustee Act, however, goes on to permit mortgage
22 investments and investments in debentures of loan
23 companies, guaranteed certificates, bonds under the
24 Bretton Woods Agreement, and things of that sort. Are
25 you restricting the recommendation to these two
26 fields only, or would you see any improvement in
27 yield from those others?

28 MR. BLACK: I did not work on this
29 brief presented by the I.D.A., but it would appear
30 to me that the fact they have recommended that the



1 Trustee Act of Ontario be implemented suggests that
2 they would accept all its terms, but it would be a
3 matter of the policy of the Workmen's Compensation
4 Board. These other investments may not be a suitable
5 medium for investment for the nature of the Workmen's
6 Compensation Board, because of the annual payments that
7 they have to face up to.

8 MR. GUTHRIE: Just one last thing. On
9 the question of inspection in the second last para-
10 graph, you refer to the audit under Section 78. Did
11 I understand you to say that the Trustee Act itself
12 provided some further control mechanism by means of
13 any inspection?

14 MR. BLACK: None other than under
15 Section 78.

16 MR. GUTHRIE: And, does your body
17 suggest any extension or change in Section 78 or do
18 you see that as an adequate control measure?

19 MR. BLACK: We don't recommend any
20 change.

21 MR. GUTHRIE: Thank you, Mr. Black.

22 THE COMMISSIONER: Thank you, Mr. Black.

23 MR. GUTHRIE: Mr. Commissioner, there
24 are a number of gentlemen here this morning represent-
25 ing the Ontario Federation of Construction Associa-
26 tions, whom I would call on now. If I recall, there
27 has been no previous oral presentation of this brief,
28 although several sections of it have been read into
29 the record as we passed the various topics. However,
30 I think these gentlemen would like the opportunity



1 this morning to deal with it in its entirety. Is
2 that correct?

3 MR. PAULIN: My name is Kenneth Paulin.
4 This brief is from the Ontario Federation of Construct-
5 ion Associations addressed to the Honourable Mr.
6 Justice George A. McGillivray.

7 Dear Mr. Commissioner:

8 The Ontario Federation of Construction
9 Associations appreciates the opportunity of presenting
10 this brief on aspects of Workmen's Compensation as it
11 affects the construction industry in Ontario. The
12 Ontario Federation of Construction Associations, which
13 is affiliated with the Canadian Construction Associa-
14 tion, a national body representing construction inter-
15 ests federally, is representative of the following
16 organizations which make up the Federation.

17 I don't intend to bother you with all
18 that, except to say this, that these are combined
19 associations which have 6,000 companies.

20 THE COMMISSIONER: Did you say 6,000
21 companies?

22 MR. PAULIN: That is correct, sir.

23 We respectfully include for your informa-
24 tion, under Appendix "A", a description of the size,
25 scope, nature, and importance of the construction
26 industry in Ontario. We do this in order to provide
27 a full appreciation of the problems encountered by our
28 industry as they pertain to Workmen's Compensation.

29 We wish to record our appreciation for the
30 continuing interest of the Board in safety matters,
particularly in the relationship and rapport that



1 exists between the Board and the Construction Safety
2 Association of Ontario, which, governed by a construction
3 industry Board of Directors, is doing a tremendous
4 educational job in order to cut the accident rate,
5 thereby reducing overall costs in assessment to the
6 construction employer. We submit that the Construction
7 Safety Association's effectiveness lies in its volun-
8 tary nature and the employers' involvement. We
9 recommend that no further legislative restrictions be
10 placed upon the operation of this association, and we
11 affirm that employers should continue to have a primary
12 voice in its affairs.

13 THE COMMISSIONER: Is that all you have
14 to say about it? Does that terminate your representa-
15 tion, or is there something later in the brief?

16 MR. PAULIN: Later in the brief I have
17 a summary and we have representatives here, if you
18 have questions. I would like to present this brief,
19 sir, in its sections and upon your directed questions
20 I will pause and, with these gentlemen who are experts,
21 we can answer your questions, sir.

22 We appreciate your indulgence in the
23 discussion of the following subjects:-

24 1. Classification and Rate Structure Review

25 With the rapid change in construction
26 technology which requires an increasing number of
27 "specialists" on the construction site, it is our
28 opinion that the present classification and the rate
29 structure are outmoded when applied to modern con-
30 struction methods. For example, on a single project



1 an employee working for a single employer, at a single
2 rate of pay (a union trade), exposed to similar risks,
3 performs activities which have rates varying as much
4 as 1000%. It is therefore recommended that there be
5 a general review of the work classifications and the
6 rate structure.

7 THE COMMISSIONER: How many work classifi-
8 cations do you come under.

9 MR. GRAYDON: In the rate book, there are
10 approximately 300 -- something less than 300 different
11 work classifications.

12 THE COMMISSIONER: All of which you come
13 under?

14 MR. GRAYDON: All of which we come under,
15 both in manufacturing and construction.

16 THE COMMISSIONER: Well, you are with
17 one company: Which company?

18 MR. GRAYDON: I am with Dominion Bridge.

19 THE COMMISSIONER: Is Dominion Bridge
20 assessed under more than one classification?

21 MR. GRAYDON: We are assessed under
22 several firm numbers, we are assessed under, perhaps,
23 6 to 10 different rate numbers for our operations.
24 Some of our operations are difficult to define.

25 THE COMMISSIONER: What is your complaint
26 about the 6 to 10 different classifications?

27 MR. GRAYDON: My complaint would be
28 general -- not just about my own firm -- that there
29 are, perhaps, too many work classifications, too many
30 rate numbers. It is very difficult to determine



1 whether or not an operation falls into this rate
2 structure or another. It is necessary, because of
3 this, for the staff to make decisions as to whether
4 an operation should go in one rate structure or another.
5 It is very difficult for the Board staff, I believe, to
6 make these interpretations consistently.

7 THE COMMISSIONER: On one job such as
8 the new Courthouse -- and Dominion Bridge would do that
9 kind of thing -- I think Piggots are on that job:
10 On the one job, would Piggot be under more than one
11 rate classification?

12 MR. GRAYDON: They, I believe, them-
13 selves, might be under one or more, but there would
14 be many sub-trades on that job, including ourselves,
15 who would be under their rate numbers.

16 THE COMMISSIONER: And your complaint
17 is that there are too many classifications?

18 MR. GRAYDON: I believe so.

19 THE COMMISSIONER: We have heard from
20 at least one firm in Kingston - this may be in
21 connection with demolitions -- where they feel the
22 classifications should be increased.

23 MR. GRAYDON: It is certainly very
24 difficult to get all of the work operations in the
25 present classifications, but it is because of those
26 difficulties, I believe, that the system should be
27 reviewed and that possibly the number should be
28 reduced.

29 THE COMMISSIONER: This may be an
30 administrative matter for the Board, but I suppose
that you have made these representations to the Board



1 MR. GRAYDON: We have discussed our
2 own principal rate numbers with the Board and they
3 have been very helpful in giving us information about
4 them, but the problem, as I see it, though, involves
5 all employers because there is a continuing problem
6 in determining what rate structure your operation
7 should come under. The Board staff have to continually
8 explain this.

9 THE COMMISSIONER: I suppose this thing
10 has just grown and been added to and changed?

11 MR. GRAYDON: Very true.

12 THE COMMISSIONER: Without, perhaps, any
13 completely -- we will hear from the Board about it --
14 but without it ever having been completely reviewed
15 from top to bottom?

16 MR. GRAYDON: I cannot tell you how often
17 that has been done.

18 THE COMMISSIONER: In any event, your
19 recommendation is that it should be reviewed with the
20 idea that eventually the rate classifications can be
21 made clearer by reducing them in number?

22 MR. GRAYDON: By reducing the number
23 perhaps.

24 MR. PAULIN: Consolidation, perhaps?

25 MR. GRAYDON: Because, as the example
26 we gave in our brief indicated, the present rate
27 structure now permits one workman to operate on a
28 single project where rate structures would be involved
29 for three different operations.

30 THE COMMISSIONER: Isn't that inevitable



works
1 when somebody/for Dominion Bridge and at the same time
2 he is working on a Piggot job?

3 MR. GRAYDON: It could be the same
4 employer in the case I am referring to.

5 THE COMMISSIONER: That is what I have
6 difficulty in understanding. I mean to say, if it is
7 the same employer, is he on one job such as that
8 assessed in chunks?

9 MR. GUTHRIE: Mr. Commissioner, I wonder
10 if the witness could make his example more specific.
11 Could you tell us the activities that would be involved
12 in that case?

13 MR. GRAYDON: Yes, I am thinking of an
14 iron worker who, in one case, could be erecting
15 structural steel, on one day, and the next day he
16 could be erecting a curtain wall, framing and window
17 and wall framing -- metal window and wall framing.

18 THE COMMISSIONER: I suppose on this steel
19 construction, the rate would be very high?

20 MR. GRAYDON: Yes. On the third day he
21 could be demolishing structural steel. The top rate
22 in that case is \$15.00 per \$100.00 of payroll.

23 THE COMMISSIONER: The complaint was of
24 this man in Kingston that, because he was in the
25 demolition business, he was lumped in with the people
26 who were demolishing structural steel in the City of
27 Toronto. He had few accidents but because of the
28 accidents they had he was on the same rate.

29 MR. GRAYDON: This was an actual case
30 that has happened and could happen again and there is



1 the most extreme variation in rate for risks which do
2 not seem to vary.

3 MR. GUTHRIE: What are the rates involved
4 in those three activities?

5 MR. GRAYDON: The rate for structural
6 steel is 809.

7 MR. GUTHRIE: Erection?

8 MR. GRAYDON: Erection of structural
9 steel, yes. For curtain wall, it is 246 -- \$1.50.

10 MR. GUTHRIE: Are you dealing with the
11 numbers or the classes?

12 MR. TURNER: It is \$1.50 on the erection
13 of curtain wall.

14 MR. GUTHRIE: What is the rate on the
15 erection of structural steel?

16 MR. TURNER: \$12.00. And demolition of
17 structural steel is \$15.00.

18 MR. GUTHRIE: Would the Board require
19 you to keep your payroll records so as to show how
20 much you paid him on a day he was erecting and then
21 how much you paid him on a day he was demolishing?

22 MR. GRAYDON: Yes.

23 MR. GUTHRIE: And divide your payroll
24 up in that manner?

25 MR. GRAYDON: Yes, this is the method
26 of allocating work for the rates which are used.

27 MR. GUTHRIE: How exact do you get on
28 that? Do you even split a day if he changes his job
29 at noon?

30 MR. GRAYDON: On a day -- it is not



1 likely you would get down to a daily basis, but it
2 could get down to a weekly basis.

3 MR. PAULIN:

4 2. Increased compensation in respect of Past Accidents

5 We feel it important to bring to your
6 attention the recommendations made by The Hon. Mr.
7 Justice W.D. Roach in his report on the Workmen's
8 Compensation Act, May 31st, 1950. He cogently stated
9 as follows:-

10 "In my very respectful opinion, it is an
11 error to provide that additional moneys necessary to
12 provide for the increase in respect of past accidents
13 should be levied and collected from the employers.
14 Such a provision was entirely contrary to the spirit
15 of the Act and violated one of its fundamental
16 principles. The compensation for which the Act
17 provides must be regarded for what it is and has always
18 been intended to be, namely, a debt owing by industry
19 to the injured workman or his dependants. It is
20 proper to measure that debt at the time of the accident
21 by whatever standard the law then specifies. When the
22 debt is thus measured or evaluated and that measure
23 is paid, industry should thereby be fully released. If,
24 in the course of time, due to changes in our social
25 thinking, or to changed economic conditions, it should
26 be concluded that the standard of measurement should
27 be altered, the debt should not be resurrected and re-
28 measured by some new standard. There should be
29 finality to it. Without such finality industry can
30 never know what its liabilities are. The ownership
of industry is constantly changing -----The main



1 reason advanced for increasing pensions which have
2 been awarded in respect of past accidents is that due
3 to changed economic conditions they are found to be
4 inadequate. If the workman or his dependants are thus
5 adversely affected by changed economic conditions and
6 require assistance, the burden of providing such
7 assistance should be borne by society as a whole and
8 not by one group of society, in this case, industry.
9 Industry discharged its debt by the standard which
10 the law prescribed when the accident happened and the
11 amount which was then paid was considered adequate.
12 It is the lessening of the purchase value of our
13 currency and the consequent increase in the cost of
14 living that later made it inadequate. That is a
15 condition of general application. It applies to all
16 persons who for any reason are in a position of having
17 to live on an income fixed in past years. -----For
18 the reasons which, perhaps at too great length, I have
19 attempted to make clear, I recommend that Section 33
20 (now 35) be deleted from the Act and that in its stead
21 a provision be inserted as a result of which, from
22 the date upon which such a provision shall become
23 operative, the additional moneys necessary to provide
24 for any increase in compensation in respect to
25 accidents which occurred prior to the increase author-
26 ized by the Act shall be paid by the Government to
27 the Board out of the Consolidated Revenue Fund."

28 It should be noted that from 1914 to
29 1922, as contained in his report, the Ontario Govern-
30 ment paid to the Board the total sum of \$652,275.28,



1 and since 1922 nothing has been paid to the Board by
2 the Government. The result has been that since 1922
3 the whole cost of administration of the Act has been
4 paid by the industries and businesses covered by the
5 Act. The public has paid nothing on that account
6 except to the extent that those industries and
7 businesses have succeeded in recouping themselves by
8 adding to the selling price of the products which they
9 produced or the services which they provided.

10 We fully support the recommendations
11 made by Mr. Justice Roach and recommend strongly that
12 reconsideration be given to deleting Section 35 and
13 provide instead, that additional moneys necessary to
14 up-grade compensation benefits which occurred prior
15 to the increase authorized by the Act should be paid
16 by the Government to the Board out of the Consolidated
17 Revenue Fund.

18 3. The Workmen's Compensation Board Appeal Structure

19 We would refer you to the appeal structure
20 of the Workmen's Compensation Board (see Appendix "B")
21 which shows the various levels through which an appeal
22 must go, beginning with Administration to a Review
23 Committee to an Appeal Tribunal and finally to the
24 Board. The industry feels that the appeal structure
25 is in its present state entirely too cumbersome. It
26 should be noted, too, that members of the appeal
27 committees are presently drawn from the administrative
28 staff of the Board itself.

29 The problem arises in the present appeal
30 procedure as to whether there may be a tendency for



1 a Review Board or Appeal Tribunal to support previous
2 decisions rendered since all appointees are chosen
3 from the original administrative branch of the
4 Workmen's Compensation Board.

5 It is felt that the Review Committee
6 should consist of outsiders appointed in the same
7 manner as arbitration boards. It is obvious that from
8 such appointments there are many advantages. It is
9 our understanding that the B.C. Legislation which was
10 amended in 1965 seems to be more effective because the
11 Review Committee does consist of persons from without
12 the Board.

13 We respectfully point out that in the
14 International Labour Conventions and Recommendations,
15 Recommendation #23 relating to jurisdictional disputes
16 concerning workmen's compensation states that such
17 disputes turn not only on the interpretation of the
18 laws and regulations but also on questions of an
19 occupational character requiring a thorough knowledge
20 of working conditions. It recommends that every
21 dispute relating to workmen's compensation should be
22 dealt with by a special court or board of arbitration
23 comprising, with or without the addition of regular
24 judges, an equal number of employers' and workers'
25 representatives nominated or appointed to act as
26 adjudicators by their respective organizations, or
27 elected by bodies of employers and workmen. Where
28 such disputes are dealt with by ordinary courts of law,
29 the court should be required to hear employers' and
30 workers' representatives as experts in cases involving
questions of an occupational character and, in



1 particular, the question of degree of incapacity.

2 It is our opinion that the question of
3 keeping workmen's compensation out of litigation and
4 the courts is an excellent precept, but in terms of
5 justice and equity an appeal should be made to a
6 tribunal or body other than the tribunal making the
7 original decision, and we do not feel that such steps
8 would necessarily destroy any administrative acts of
9 workmen's compensation but rather enhance the opera-
10 tions of this quasi-judiciary body.

11 THE COMMISSIONER: What you suggest --
12 you don't suggest that you return to the old system
13 where you had to go to the courts to get it decided,
14 but that somebody take the place of the judge to
15 decide it? Aren't you going to get back to the same
16 place?

17 MR. COX: Yes, that is correct, sir.
18 We do not see any value in returning decisions of
19 this nature to the court of law, but rather, a
20 tribunal within the concept of workmen's compensation
21 but which would consist of outsiders.

22 MR. GUTHRIE: Mr. Cox, who would you
23 recommend should appoint the outsiders -- the Board,
24 or some member of the Government, or the Cabinet, or
25 what?

26 MR. COX: I think the Board, in relation-
27 ship to the -- let us take the particular workman:
28 They could, perhaps, turn, if the man is a union
29 employee, to the union itself to appoint somebody
30 who would have an awareness of the occupation and



1 to the particular trade association who could perhaps
2 appoint an employer to sit on the tribunal and an
3 impartial chairman.

4 MR. GUTHRIE: Do you mean each separate
5 case -- that a separate board would be set up for
6 each case?

7 MR. COX: It might be, or you might
8 turn to the particular federation of the industry.

9 MR. PAULIN: The incidence isn't that
10 great.

11 MR. GUTHRIE: We have heard evidence
12 that there are, perhaps, 2,000 of these appeals in
13 a year.

14 MR. PAULIN: When you come down to the
15 final appeal, wouldn't it be rational thinking to feel
16 that the union involved would have a person who is
17 conversant with that section of the industry and also
18 that it would be an invasion of our industry which
19 can go anywhere from marine to architectural buildings
20 or underground services, that someone should be in
21 that field of business to be on the Board to hear the
22 testimony?

23 MR. GUTHRIE: I can certainly see the
24 idea of expert knowledge, but there have been many
25 employer associations who have opposed the idea of
26 putting a labour and an industry man on these boards
27 because it might tend to create an adversary system
28 where you would have a lot of split decisions as you
29 do in conciliation matters.

30 THE COMMISSIONER: There is another



1 thing, Mr. Paulin: One of the strong submissions
2 made is that all the Board files should be made
3 accessible to labourers appealing, and in objecting
4 to that they refer particularly to reports of doctors.
5 It might not apply to somebody like Dominion Bridge
6 or somebody in some of the bigger cities, but in the
7 small communities where it is a labour community and
8 the doctor is under the gun, we have had some medical
9 evidence here that indicated it was not desirable
10 that his report should be made public and that you
11 would get a more independent view from him if he was
12 not going to be cross-examined and put through the
13 mill as he might be in court as to the accuracy of
14 the report which, in any event, would make him very
15 unpopular in the community where he practiced.

16 Now, under the scheme that you suggest,
17 it obviously would contemplate that it would almost
18 follow that if it isn't to go outside of the Board
19 that all of that evidence would have to be made
20 available.

21 MR. PAULIN: I think the suggestion
22 would be in the final fourth level. In other words,
23 it has gone through the process of deliberation and
24 if the case is such that it should be resolved that
25 something of this kind should be produced, then, as
26 I say, it would be rather the exception than the rule
27 to come to this state of the general progress through
28 the Board. But at this time, it is apparently of
29 much importance and has not been resolved in the
30 previous meetings and it should have some consideration



1 by expert representation. I think this is our
2 suggestion, sir. It is not to destroy the actual
3 normal operation of the Board in its assessments and
4 awards. Is this not right, Mr. Cox?

5 MR. COX: That is right.

6 MR. GUTHRIE: You are thinking then in
7 terms of the final appeal stage only?

8 MR. PAULIN: That is correct.

9 MR. GUTHRIE: And is this by way of an
10 appeal from the Board or substituting a new body for
11 the Board as the final Appeal Tribunal?

12 MR. PAULIN: We have suggested that the
13 Board appear in regular attendance throughout the
14 whole process, and that perhaps they should be
15 divorced from this in its final process and some
16 other type of body hear the case in order to assess
17 its final merits.

18 MR. GUTHRIE: At the last resort, so
19 to speak?

20 MR. PAULIN: That is right.

21 THE COMMISSIONER: You are talking about
22 the final process?

23 MR. PAULIN: That is right.

24 THE COMMISSIONER: How many processes
25 are you considering? You have already got three levels
26 of appeal at the Board itself. Do you contemplate
27 going through those three and then having the right
28 to appeal somewhere else?

29 MR. PAULIN: I think the industry is,
30 perhaps, aroused by the double assessment that has been



1 considered in the last few months and this is a very
2 serious threat to many employer groups and we feel
3 that we should have certainly an absolutely impartial
4 review board when it comes to the final. I can see
5 one of those things which means a man could be put
6 out of business, I can see one of those going to the
7 final appeal board. I don't think it is a facetious
8 thought. I think it is something that could be a
9 reality.

10 THE COMMISSIONER: There is no suggestion
11 that it is. Have you suffered a double assessment?
12 Have you something to say about that later on?

13 MR. PAULIN: I think so, sir, yes. May
14 I continue?

15 THE COMMISSIONER: If you suffered a
16 double assessment, in what years?

17 MR. PAULIN: Not personally, no. I am
18 going to refer again to Mr. Cox representing the
19 Ontario Federation.

20 MR. COX. There have been double assess-
21 ments, Mr. Commissioner, throughout the industry. I
22 think, in fairness to the Board, they have given due
23 consideration to the way that perhaps the record of
24 the company has come about in double assessment and
25 they have been very fair, I think, in many instances.

26 THE COMMISSIONER: That is what I was
27 going to say. There has not been a double assessment
28 within the overall assessment. You must be out of
29 line with the overall assessment. I have not the
30 figures before me, but they were given to us yesterday



1 or the day before. Well, perhaps we can go along with
2 Mr. Paulin.

3 MR. PAULIN: Thank you, sir.

4 4. Waiting Period

5 Section 3 of Part Ia of the Act under
6 "Compensation" provides for compensation to be paid
7 to a workman except where the injury does not disable
8 the workman for a period of at least three calendar
9 days from earning full wages at the work at which he
10 was employed.

11 We note that in the report of the 1950
12 inquiry, Mr. Justice Roach recommended that the appro-
13 priate section of the Act at that time be amended to
14 read as follows:

15 ".....does not disable the workman for
16 the period of at least four working days
17 from earning full wages at the work at
18 which he was employed. 'Working days'
19 shall include all holidays for which the
20 workman if uninjured would be paid
21 without working."

22 In his report Mr. Justice Roach stated that there
23 should be some waiting period, and if the disability
24 extends beyond that period, compensation should be
25 payable from the date of the accident. The question
26 of malingering arose in his report and is one which
27 concerns us as construction employers. The waiting
28 period under the present Act can include two non-
29 working days, that is, Saturday and Sunday, and since
30 the Act is designed to compensate an injured workman



1 for loss of earnings, it is felt that the present
2 section of the Act where the words "calendar days"
3 are used should be changed to "working days", and the
4 three days increased to four working days.

5 Therefore, we recommend that Section 3,
6 Part Ia of the Act should be changed to read as
7 follows:

8 ".....does not disable the workman for a
9 period of at least four working days
10 from earning full wages at the work at
11 which he was employed."

12 5. Compensation Claims

13 In surveying the construction industry
14 and contractors' operations, we have continually run
15 up against the complaint of suspicion of fraudulent
16 claims being made and of situations occurring where
17 compensation is claimed and payments being made to
18 workmen who are not actually injured to the extent to
19 which they appear to be and employees suffering from
20 compensable injuries, being away for periods inordin-
21 ately longer than appears to be warranted by the nature
22 of the injuries.

23 While we are not in a position to quote
24 statistically what percentage of total accident
25 experience is considered to be fraudulent or inordin-
26 ately longer compensation payments are made and define
27 it in qualitative or quantitative terms, we feel that
28 as a result of the number of complaints made (even
29 with the reluctance to have company records revealed)
30 that the problem is worth of note by you as
Commissioner of this inquiry.



1 In many instances and large number of
2 cases, back injuries or other sicknesses where com-
3 pensation is paid, makes it extremely difficult to
4 have clear cut medical recommendations made. The
5 increase in back injuries, for example, seems to have
6 a direct relationship to the completion of a construct-
7 ion project and the approach of winter months. We
8 know that it is rather difficult to prove that some
9 of the claims for compensation that are paid for so-
10 called injuries are not valid claims. These cases
11 are even more elusive than to other concerns such as
12 manufacturing. Management of manufacturing generally
13 have a complete accident record of employees since
14 the employees are permanent and generally have con-
15 siderable seniority. Also, the employer in manufactur-
16 ing, aided with the employee's complete accident
17 record, is better able to pinpoint possible fraudulent
18 cases and make representations to the Workmen's Com-
19 pensation Board accordingly.

20 However, in the construction industry,
21 as outlined in Appendix "A", the construction employer
22 is constantly hiring employees who have just finished
23 working for a different contractor in the area. There
24 is a great lack in that the employer does not have
25 the total picture of the man's injury record. It
26 seems that in such a situation the only agency which
27 can see the picture as a whole is the agency which is
28 processing or reviewing the employee's file at the
29 Workmen's Compensation Board. Certainly it would seem
30 invaluable if a system were instituted whereby an



1 employee who had a record of compensable injuries
2 carried with him a medical certificate or book. The
3 employer could then provide suitable work and the
4 extra supervision required to prevent further injuries.
5 To offset any feeling that this would work against the
6 interests of the employee in obtaining work, it is
7 respectfully suggested that should an injury recur,
8 consideration be given to the proper assessment of the
9 injury against the records of the employer where the
10 original injury occurred.

11 There have been reports of situations
12 occurring where employees suffering from compensable
13 injury have been away for periods longer than appear
14 to be warranted by the nature of the injuries. While
15 it is agreed that the Act provides that the employer
16 where he is not satisfied can insist on a medical
17 examination of the workman by a company appointed
18 doctor, it is felt that this arrangement is not too
19 satisfactory and that some alternative procedure is
20 called for which will eliminate unnecessarily extended
21 time off work.

22 THE COMMISSIONER: What alternative
23 procedure do you suggest?

24 MR. PAULIN: I was just trying to think
25 of a case we had. We had a case of a man who was
26 injured and we called in our own physician to examine
27 the man with regard to a back injury that was not
28 able to be assessed. As a matter of fact, we made a
29 claim through the Compensation Board on behalf of this
30 man because of his past history with the company. He



1 had been in our employ all the way through. We knew
2 of his history. I think what we are referring to
3 here is that because of the transient nature of these
4 men, we must have some kind of a control on their
5 accident-prone record because these men are not suited
6 to industry and it is unfair to the other people in
7 the industry where they may cause accidents to the
8 other workers on the job and we feel we should have
9 control over these men. Perhaps they should not be
10 in our industry if they are accident-prone. This all
11 comes under the medical examination and the history
12 of the man.

13 THE COMMISSIONER: The trouble with this
14 is, it may easily be and probably is, as you
15 suggest, in your particular field, a very serious
16 matter. The Act has to consider the overall picture,
17 I mean to say, are all workmen to be forced to carry
18 an accident record book which is one of your
19 suggestions.? It is pretty radical, as you know.
20 They object to even getting finger-printed or anything
21 else these days.

22 MR. PAULIN: I am certainly not in
23 favour of paper work, that is for sure, but because
24 of the transient nature and because of the fact that
25 we have no actual record of this man's past background,
26 he may come from contractor A to me and go from me
27 to contractor C and, in the process, he may have been
28 injured on contract A, gone through my process with-
29 out any injury but when he turns up on process C
30 he could be claiming from both A and C. This is a



1 possibility.

2 THE COMMISSIONER: When you employ him,
3 do you ask him where he worked before?

4 MR. PAULIN: Yes.

5 THE COMMISSIONER: Do you ask him if he
6 had accidents on his previous occupations?

7 MR. PAULIN: That is part of the drill,
8 but it doesn't prove anything. There is no actual
9 record and the Workmen's Compensation Board quite
10 often is about six months in arrears on recording this
11 information.

12 THE COMMISSIONER: He would not be in a
13 hurry to tell you if he had had accidents?

14 MR. PAULIN: That is correct.

15 THE COMMISSIONER: He would think he
16 would not be employed?

17 MR. PAULIN: That is correct.

18 MR. GUTHRIE: But you would be at
19 liberty to call the previous employer. Does that
20 present a great problem?

21 MR. PAULIN: Quite often it does.

22 Because of the transient nature of our business, we
23 may only have these gentlemen for a short period of
24 time. I think, personally, and this is not included
25 in the brief, but my personal answer to this is that
26 if we had the co-operation in our industry which is
27 unionized and, of course, I am not presenting some-
28 thing on the union half alone, because we have a great
29 many members who are not unionized, but if we had some
30 kind of a working agreement with the union whereby



1 these men who normally come through their hiring
2 hall and they could give us information of this kind,
3 it would be invaluable, but we cannot have it because
4 sometimes they come from Toronto to our area and
5 Niagara Falls to our area and because of the transient
6 nature it is very, very hard to keep track of these
7 gentlemen.

8 Again, sir - and I want to be very
9 honest about this - it is my personal feeling that some
10 men in our ranks make a business out of getting sick
11 and getting compensation.

12 THE COMMISSIONER: Well, there are some
13 malingerers. Even the union people will admit that.
14 That is inevitable.

15 MR. PAULIN: These are the ones that
16 destroy it for a lot of other people who are very
17 good people and we have a great deal of respect for
18 them.

19 THE COMMISSIONER: Well, this is the
20 problem. You can't provide for everything.

21 MR. PAULIN: The reason for the medical
22 certificate was to suggest not only for that man but
23 for the benefit of most of the men who are on our
24 job, because of the nature of our business, a man
25 who is accident-prone can hurt more than himself and
26 this is a very great threat to our industry and, of
27 course, I mention again that double assessment can
28 be effected by someone getting into our job who really
29 doesn't belong in the construction business and if
30 he has a history that is accident-prone both the



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1 unions and ourselves should make sure that perhaps he
2 be kept on the ground.

3 MR. GUTHRIE: Do you think that the
4 suggestion which goes so far as an invasion of personal
5 privacy, Mr. Paulin, is -- weighing that against
6 the number of men who are involved in these situations
7 and the other trades and industries that have not the
8 same problems, do you still feel that you must go
9 that far?

10 MR. PAULIN: I anticipated that question
11 and I can only answer that we have to rationalize
12 this thing. It does not apply to every person and I
13 think that the employer in most cases is sincere and
14 so is the union and if we find someone who is a mis-
15 fit, it behooves both of us to make sure that he does
16 not destroy the working rates of a lot of men in his
17 environment .

18 MR. GUTHRIE: But you are saying, in
19 order to find the misfit, we have to label everybody?

20 MR. PAULIN: Well, what you are doing
21 is having a certificate or some kind of a recording.

22 Not to criticize the Workmen's Compensation Board
23 our information is in arrears as much as six to eight
24 months. If it ^{were} effectual within a week, this problem
25 could, perhaps, be rectified, but because of the
26 reporting process, we do not get this information
27 untillong after the man could have caused
28 serious damage.

29 THE COMMISSIONER: You are giving us
30 something now that may be of some value. That is



1 a suggestion that has some possibilities perhaps
2 but the other one when you consider it has to apply
3 to all workmen in all businesses, not those in yours
4 alone where the risks may be exceedingly high, and
5 because of its nature is a pretty radical suggestion.
6 However, the other suggestion you make is that the
7 Workmen's Compensation Board might find some means
8 in your industry in any event of furnishing you week
9 by week with records of compensation awards.

10 MR. PAULIN: Or, as an alternative, if
11 they could - and perhaps this is not the Board's
12 duty - it is the duty between the employer and the
13 unions, we could get the co-operation of the unions
14 to keep a record of these people and let us know when
15 we hire them.

16 THE COMMISSIONER: It seems to me that
17 that is a remedy, not only ^{by} the unions, but your
18 fellow members of the Association.

19 MR. PAULIN: That is correct. As a
20 member of the public, I would like to know what an
21 accident-prone man is.

22 THE COMMISSIONER: There have been
23 some definitions of accident-proneness. I don't
24 know whether Mr. Paulin is willing to give a definition
25 of accident-proneness, but we are all aware of the
26 fact that some people are accident-prone.

27 MR. PAULIN: I would be a very smart
28 man if I could.

29 THE COMMISSIONER: Everybody in industry
30 must know that some people seem to be left-footed.



1 They are always getting into trouble. Of course, then
2 it brings up the question who is going to decide at
3 some time that he is unemployable for that reason
4 and certainly at some stage in the game, in spite of
5 the fact that you say you try to make allowances and
6 to find him work where he would not be endangering
7 other people, it would result obviously in a number
8 of cases in him not being employed at all. Well,
9 these are things we have to consider.

10 I don't think that it is fair to ask
11 Mr. Paulin to give us a dictionary definition of
12 accident-proneness.

13 MR. PAULIN: Thank you, Mr. Commissioner.

14 A SPECTATOR: I did not want to interrupt,
15 but he referred back to unions to sort these people
16 out who are accident-prone and who are not and I
17 think, in fairness, since he has raised the question,
18 he should give us a definite definition.

19 THE COMMISSIONER: That is something
20 you will have to take up with the unions.

21 MR. PAULIN: Perhaps you could give me
22 your comments in a letter and we could do it through
23 correspondence rather than at this hearing.

24 May I continue, sir?

25 THE COMMISSIONER: Yes.

26 A further situation which occurs is when
27 an employee now working for another company will claim
28 compensation in respect of an injury which occurred
29 during previous employment and for which the original
30 employer is assessed. What steps are taken to ensure



1 that the subsequent complaints are thoroughly checked
2 where reasonable doubt may exist before further com-
3 pensation is paid? Is there any record which indicates
4 that an individual is the subject of numerous claims
5 for compensation?

6 It is respectfully suggested that if it
7 can be established that compensation has been paid on
8 the basis of false claims, appropriate penalties should
9 be imposed on the claimant.....

10 THE COMMISSIONER: Do those claims go
11 to the Board in a declaration, or is there any sworn
12 declaration or anything which accompanies them? I
13 don't suppose there is.

14 MR. GUTHRIE: Not sworn, no.

15 MR. PAULIN:and we feel that the
16 Workmen's Compensation Act should adequately provide
17 for penalties in such instances.

18 We wish to quote for your information
19 Section 21, Subsection 1, of the Act, as follows:

20 "Subject to subsection 5, compensation
21 or medical aid is not payable unless
22 notice of the accident is given as soon
23 as practicable after the happening of
24 it and before the workman has voluntarily
25 left the employment in which he was
26 injured and unless the claim for com-
27 pensation or medical aid is made within
28 six months from the happening of the
29 accident or, in case of death, within
30 six months from the time of death."



Subsection 5 says:

"Failure to give the prescribed notice or to make such claim or any defect or inaccuracy in a notice does not bar the right to compensation if in the opinion of the Board the employer was not prejudiced thereby or, where the compensation is payable out of the accident fund, if the Board is of the opinion that the claim for compensation is a just one and ought to be allowed."

This section of the Act is ambiguous in that it cancels out the importance and intent of the original concept of reporting accidents. In many instances the employer's first knowledge of the accident will occur when he receives notification from the Workmen's Compensation Board that a former workman has applied for workmen's compensation and which will be assessed against his company, and he is asked by the Board whether he intends to contest the workman's claim. To do this, the employer is required to fill in the Workmen's Compensation Board Form 7 "Employer's Report of Accident or Industrial Disease."

The construction employer has great difficulty after a time lapse in researching and finding out if in fact an accident did occur, and all too often the time element and the mobility and replacement of the work force is such that no record is available, and consequently no contest offered to the injured workman's claim.



1 This immediately raises a suspicion as
2 to whether in fact an accident did occur. It could be
3 that the injury, particularly a back injury, might
4 have occurred in the evening during pleasurable
5 pursuits outside of working hours, such as pushing a
6 car to start it or digging in the back garden. It
7 would appear that in view of the trend to a shorter
8 working week and more leisure time, the incidence of
9 injuries occurring during non-working hours should be
10 investigated and procedures set up to ensure that
11 disabilities arising during the course of leisure
12 activities be distinctly defined and separated from
13 construction disabilities.

14 THE COMMISSIONER: There are two things
15 I would like to say about that. The first one is,
16 you refer, for instance, to a back injury and it might
17 be that a man suffers some injury to his back on the
18 job, but felt that it was not severe enough to report
19 it and kept on for awhile and it might be substantially
20 later that he did report it. There may be other cir-
21 cumstances that would be particularly hard if the
22 Board was refused the right up to six months in any
23 event to consider cases that come up. But in England,
24 and
25 It has been suggested that it might help here, a penalty
26 might be imposed for non-reporting to the effect
27 that he might lose compensation up to the period that
28 it was reported. That was one thing that we have
29 been asked to consider.

30 In connection with the latter part,
 a more careful investigation of what happens during



1 his leisure time, and I don't quite know how that is
2 to be carried out.

3 MR. PAULIN: I think some of it can be
4 rectified.

5 THE. COMMISSIONER: He can fall out of a
6 tree two weeks ago and go back to work and then say he
7 had some kind of an accident after he got there. This
8 is what the Board is up against all the time, I suppose,
9 trying to sort out the wheat from the chaff and trying
10 to find out what is a valid claim. It is an administra-
11 tive medical process.

12 MR. PAULIN: Mr. Commissioner, and I can
13 speak from first-hand, we had a \$4000.00 assessment
14 not too long ago. The workman apparently strained
15 his back on the job, as is quite often the case --
16 and I have had a disc out so I know of what I speak --
17 and he did not realize the extent of it right then,
18 but he could not get out of bed the next morning.
19 Now, I had felt all along that the doctor's report
20 should be made to us immediately, he went to see him
21 about it because it was a Workmen's Compensation
22 problem so that we could at least have notice of it.
23 He could have left our employ and gone to work for
24 another contractor as far as we knew. We did not know
25 why he did not turn up in the morning. We do not put
26 an actual check on every workman that goes through
27 our firm. But, to our great surprise, we got a bill
28 for \$4,000.00 for treatment and for doctor's bills
29 for this gentleman and this is the first knowledge
30 we had of it. It was not reported to our superintendent.



1 THE COMMISSIONER: In that case, did you
2 know he had had some minor accident the day before?

3 MR. PAULIN: No, sir. It was lifting
4 a 45 gallon drum, according to him, but he did not
5 report it to the superintendent and we have still got
6 the bill. As a matter of fact, we are contesting it.
7 This is the kind of thing that can happen.

8 THE COMMISSIONER: Well, the thing you
9 require there is a mandatory report by the doctor,
10 and it is not easy to make the medical profession toe
11 the mark on these things.

12 MR. PAULIN: I don't think we are
13 criticizing the fact that we wanted a complete report,
14 except that the doctor should give us notice that he
15 had occasion to have claimed he was hurt on our job.
16 This at least could be done.

17 THE COMMISSIONER: Perhaps you should
18 tell him he has to, but what is to make him do it?
19 That is one of the troubles, I think. Some effort
20 might be made, but the doctors as well as the others
21 have paper work piling up and they resent having to
22 do too much or any more than they are doing now.
23 Well, that is one of the things you suggest there.

24 MR. PAULIN: I think one of our greatest
25 problems in this construction industry is quick
26 notice, so that we may administer these problems
27 ourselves.

28 THE COMMISSIONER: Yes, many others
29 have made that representation.

30 MR. PAULIN: The encouragement of such
claims without reporting accidents to an employer is



1 spelled out in the Workmen's Compensation Act to the
2 detriment of construction management as follows:

3 Paragraph 2 of Section 3 provides:-

4 "Where the accident arose out of the
5 employment unless the contrary is shown,
6 it shall be presumed that it occurred in
7 the course of employment and, where the
8 accident occurred in the course of
9 employment, unless the contrary is shown,
10 it shall be presumed that it arose out
11 of the employment."

12 We strongly recommend that this presump-
13 tion should immediately be removed from that section
14 of the Act and be replaced with wording which will
15 provide that it is incumbent upon the workman to
16 report the accident to his employer as soon as
17 practicable after its occurrence and before his com-
18 pensation claim is even considered. Also, Form 7 of
19 the Workmen's Compensation Board should provide for
20 more information from the employer with respect to the
21 accident, the report of the injured employee, and
22 names of witnesses to the event, if any. It is our
23 feeling that Form 7 as presently constituted does not
24 possibly provide sufficient information to the Board
25 to consider a claim on the basis of information
26 presently provided by management. We feel that in
27 the light of the foregoing this is a very necessary
28 requirement for the protection of construction
29 employers.

30 We believe there should be a medical



1 certificate, record or book provided employees by the
2 Workmen's Compensation Board which could alert contract-
3 ors regarding accident prone employees who are having
4 continuous injuries and accidents that indicate a
5 specific pattern. We feel that this would help prevent
6 accidents in that the employer could provide sharper
7 supervision in such cases. Also, the matter would be
8 greatly assisted if the appeal procedure were amended
9 as recommended earlier in this brief and provide the
10 machinery whereby an employer could launch a complaint
11 after which an independent committee could render a
12 more objective decision. It is our belief that this
13 kind of appeal procedure would also encourage the
14 family doctor to perhaps make more responsible re-
15 commendations as to the expected time the individual
16 will be laid up.

17 6. Rehabilitation

18 The inquiry should look closely at the
19 operation and facilities and procedures provided for
20 rehabilitating and hastening the return of an injured
21 workman to a useful role in society. It appears that
22 if a man with a disability is directed to get light
23 work, there might be some need for a form of re-
24 training or direction to a re-training programme or
25 that light work might be necessary until the person
26 has re-gained a degree of fitness to resume the form
27 of duties which was his occupation prior to his injury.

28 As things presently stand and because
29 of the nature of construction industry, it is not
30 always possible for a construction employer to re-hire



1 a disabled workman. Example, the construction project
2 may be completed by the time the disabled workman is
3 able to take up his duties. Also, in view of the fact
4 that the contracting agency all too often is the trade
5 union, the contact with a disabled employee is lost
6 once that employee has gone on workmen's compensation
7 other than a permanent employee of a construction
8 employer.

9 We wonder how realistic it is to expect
10 that the construction industry can provide jobs that
11 can utilize a man who is 50-75% incapacitated even
12 if this is only on a temporary basis. This seems to
13 be an area where there should be some liaison by the
14 Workmen's Compensation Board with the company, the
15 Department of Education if re-training is required,
16 the Unemployment Insurance Commission, and the
17 specific craft union if the employee is a member. There
18 seems to be a need to provide an incentive for an
19 employee to return to work as quickly as possible. It
20 would appear that in other Provinces, Compensation
21 Acts have stressed the need of estimating how long it
22 will take the employee to become completely rehabili-
23 tated. Once this has been established, they taper
24 off the percentage of compensation to which he is
25 entitled so that instead of going from 100% to nothing,
26 there is usually a three to four month period whereby
27 the employee is on a 50% compensation allowance and
28 therefore has an incentive to find work.

29 THE COMMISSIONER: You say that is
30 the situation in other provinces: What do you think



1 the situation is here? What is your idea of it?

2 MR. PAULIN: My understanding of it is
3 that 75% of his weekly payroll is paid until he
4 returns to work.

5 THE COMMISSIONER: That is not my under-
6 standing of the evidence that has been given here. My
7 understanding is that if he is partially disabled,
8 he may be on full payment for a limited period of
9 time and then he is put on another basis. I learned
10 for the first time yesterday or the day before that
11 the basis he is put on is 50%. They find it easier
12 to put him on 50% to begin with than carry him on to
13 50% when he might otherwise drop down to 10%, or some
14 lower amount to give him a chance to be re-employed.

15 MR. PAULIN: If this is the case, we do
16 stand corrected, because I went on to say that a man
17 receiving 75% of his earnings, if it is non-taxable,
18 and getting Unemployment Insurance, is probably in
19 better shape than if he went to work.

20 THE COMMISSIONER: The way it has been
21 presented to this Commission, and there has been a
22 great deal of objection from the unions because they
23 say he should be on the full 100% as long as he is
24 partially disabled. There have been very strong re-
25 presentations made by the unions to that effect. They
26 object to the policy of the Board of not keeping him
27 on 100% until he is able to go back to work.

28 As far as training and rehabilitation
29 is concerned and also an effort to place him, I
30 believe the Workmen's Compensation Board have a



1 placement officer, or a placement office, and they
2 have, obviously out at Malton, quite a large opera-
3 tion for people who are partially or fully disabled,
4 or with permanent or partial disabilities.

5 MR. PAULIN: Perhaps it is education
6 we are referring to, whereby they are leaving one
7 business and going to a less arduous one.

8 THE COMMISSIONER: I assume that
9 operation and I understand that is part of it to try
10 and make these people fit back into the picture. The
11 unions representing the construction trades are
12 complaining about the very thing that you think that
13 is happening -- objecting to the fact that it is below
14 75%.

15 MR. PAULIN: Well, may I sum up, that
16 as far as we are concerned, there are three things,
17 one, the return of the man to useful occupation in
18 society. We feel a man's incentive should be to return
19 to work as soon as possible. Two, liaison being
20 maintained through the disability period. Liaison
21 is absolutely negative as far as many employers are
22 concerned because once you leave that employ and go
23 into Workmen's Compensation we don't know anything
24 about it until we are either assessed or he comes
25 back looking for a job..

26 THE COMMISSIONER: Where are you now?

27 MR. PAULIN: Because of the fact I
28 stand corrected, I am not going to read the paragraph
29 on page 12 where I thought we were right in saying
30 that 75% of his average earnings on which he was



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1 not called upon to pay income tax or Hospital Insurance
2 and that sort of thing, that he could be better off
3 than if he was at work. Because there is no assessment
4 on his pay or under the 75% Workmen's Compensation
5 privilege. Would you like me to go through that
6 paragraph, even though I may be wrong?

7 THE COMMISSIONER: It is the last para-
8 graph I am concerned with. I have just read the end
9 of that paragraph, but I see, amongst other things,
10 that on a man who is on full compensation that you
11 recommend "It is possible for a workman who is on
12 partial disability to add sufficient earnings to his
13 compensation to place him in greater economic advantage
14 than a quick return to full employment. We feel
15 there is a time when a legitimate period for compensation
16 must end and when other 'insurance benefits apply." I
17 understand that is the attitude of the Board and the
18 man is required to seek Unemployment Insurance. We
19 have had the Unemployment Insurance people in here
20 and they say Unemployment Insurance is payable even
21 though he is a partial disability and it is to this
22 that the unions object. Then you go on to say, "We
23 also feel that the question of compensation (which in
24 fact is a replacement of wages) should be reported
25 as income as the employer is providing these moneys
26 through the Board." Well, reporting it as income
27 won't do any good as long as the Dominion authorities
28 say that Workmen's Compensation payments are not
29 subject to income tax.

30 MR. PAULIN: Well, is it not possible



1 for this group to object to the interpretation by
2 the Dominion Government.

3 MR. GUTHRIE: What was behind your
4 thought in recommending the reporting of that com-
5 pensation to the Department of National Revenue? Was
6 it with a view to it being taxed?

7 MR. PAULIN: That is correct. In other
8 words, it is another incentive for this man to return
9 to work because there was in my interpretation -- and
10 I stand corrected by the Commissioner -- that if a
11 man received 75% of his weekly wage not taxable,
12 receives all of the amenities which are under our
13 social regulations, he could conceivably be better
14 off economically than if he worked and this, of course,
15 destroys incentive for that man to return to work as
16 quickly as possible. We certainly don't want a man
17 who is incapacitated to suffer, but we don't want
18 him to be in such a condition that he is as well off
19 as the man who is working for his living. I don't
20 think there is anything wrong with that kind of
21 concept.

22 MR. GUTHRIE: In the concluding para-
23 graph on page 12, the second item is that you are
24 concerned with liaison being maintained throughout
25 the disability period: Do you find there is any
26 difficulty in obtaining information from the Board
27 about the condition of an injured workman as to his
28 progress?

29 MR. PAULIN: I Just stated previously
30 that we just got an assessment for \$4,000.00 and



1 didn't know the man was in the current custody of his
2 doctor and the Compensation Board until we were assessed.

3 MR. GUTHRIE: You get those assessments
4 monthly, don't you? Are you not advised each month
5 of the claims that are assessed against the company?

6 MR. PAULIN: The assessment on the
7 claim is made spasmodically. I don't think there is
8 any real pattern to it.

9 THE COMMISSIONER: I suppose he was
10 under partial disability for awhile?

11 MR. PAULIN: The point is, we didn't
12 even know he was on compensation until we got the
13 assessment. I think it is the Board's duty to inform
14 the last employer where this man is. We thought he
15 had left our employ to go to work for Mr. Nicholls.

16 MR. GUTHRIE: Your recommendation would
17 then be that the Board should immediately notify you
18 of the claim, but it does that, does it not, by
19 asking you for Form 7? Is that the equivalent? I
20 know the problem about the employee in not reporting
21 to you, but can the Board do it any faster than it
22 is now?

23 MR. PAULIN: I don't know what your
24 actual complete mechanics are.

25 MR. GUTHRIE: I don't either. I am
26 not with the Board.

27 MR. PAULIN: If a man is going to get
28 Workmen's Compensation he goes through, first, his
29 medical, and then he apparently goes to the Workmen's
30 Compensation, if it is an accident for which he has



1 to have treatment. Maybe at this point they could
2 inform us that the man is claiming he was injured on
3 the job and that he is in their care and custody. I
4 don't think we get this information.

5 THE COMMISSIONER: Mr. Paulin, this
6 case puzzles me too, but, as you say, he suffered
7 this injury in your place today and tomorrow morning
8 he could not get out of bed so he had a doctor, I
9 assume?

10 MR. PAULIN: His own doctor.

11 THE COMMISSIONER: You didn't hear about
12 it for three months after?

13 MR. PAULIN: That is right, until we
14 got the assessment.

15 THE COMMISSIONER: Is it too much to
16 ask you for the claim number in that case, because
17 this is something I fail to understand. I understand
18 that the moment they are notified of a claim they
19 ask for a report from the employer, and I gathered
20 that that did not take more than a few days.

21 MR. PAULING: I will make that available
22 to you through our company records, sir.

23 THE COMMISSIONER: Thank you. Your
24 third point is the reduction of costs of assessment:
25 Have you dealt with that?

26 MR. PAULIN: No, I was just going to
27 mention that, sir, and elaborate on that. The cost
28 of assessment, of course, is completely relevant to
29 the amount of time that a man is apparently incapacitated
30 and there is an incentive to get him back to work and



1 the assessment is not going to be so extreme and we
2 are not going to deplete a fund which has been built
3 up over the years and which, I understand, is pretty
4 close to a deficit balance.

5 THE COMMISSIONER: The Board is quite
6 aware, I believe, of two things. One is that in the
7 man's own interest, his own morale, he should be got
8 back to work as soon as possible. The other is that
9 some people need a prod and partial disability in
10 which they are not getting full compensation and even
11 under Unemployment Insurance they are substantially
12 below, that is an incentive for their return to
13 work. These things have been considered by other
14 Commissioners when this has come up, and we are well
15 aware of this. This decision as to partial disability
16 ending or, I mean to say, any further compensation
17 ending when partial permanent disability, for instance,
18 is decided is one of the things that they have had in
19 mind in making these decisions. That is one of the
20 things to which, of course, the unions are objecting
21 at the present time. So, I think we are well aware
22 of your representations in that regard.

23 MR. PAULIN: Thank you, Mr. Commissioner.

24 I certainly would not want it to be
25 taken from my comments that the employer feels that
26 there has been an over-indulgence by the workman in
27 mistreating his compensation awards. However, I wish
28 to say this to the unions who may be listening, that
we are concerned with a small group who are mistreating
this area of relief, and I am sure they are just as



1 concerned as we are. I am quite concerned with this
2 group and I feel that the unions are as much worried
3 about the fact that our fund is being depleted at a
4 rapid rate and that there should be some brake put
5 on, as we are.

6 7. Medical Costs

7 It has been suggested by some construction
8 employers that with the introduction of OMSIP (the
9 Provincial Government medical plan), that there could
10 be a reduction in medical costs as they now apply to
11 the Workmen's Compensation Board. We are not clear
12 how much OMSIP coverage there is of workmen in con-
13 struction, but medical costs do constitute a consider-
14 able percentage of the total assessment.

15 THE COMMISSIONER: I have been told, off
16 the record, that at the present time in the Province
17 of Ontario only about 10 percent are covered. There
18 has been no evidence before this Commission on that
19 in which event, it might not at the moment present
20 an actual problem, but it might readily be one before
21 very long in the future.

22 MR. PAULIN:

23 8. Pensions and Retirement

24 Now that the Canada Pension Plan has
25 been introduced and its related social security schemes
26 will gradually go into effect over the next few years,
27 the inquiry should study the relationship between
28 Canada Pension Plan payments and pensions under
29 Workmen's Compensation when workers reach the retire-
30 ment age. Because conditions of society change during

1 the years, this new situation is one for which we feel
2 an adjustment is necessary.

3 THE COMMISSIONER: This, too, was con-
4 sidered and, at the moment - some have made some re-
5 commendations in this regard but, at the moment, no
6 one can tell us just what the impact is. Disability
7 provisions of the Pension Plan do not come into effect
8 for four years. It is complicated by the fact that
9 the Pension Plan is under the jurisdiction of the
10 Dominion Government, the Workmen's Compensation is
11 the Province, and it is obviously a matter for some
12 conferring by the requisite authorities and a sub-
13 stantial study. I feel strongly at the moment that
14 such a study should be conducted, but I don't think
15 that I am in a position here to assess it from all I
16 have heard, or even from any other enquiries I might
17 make through an actuary or someone else.

18 MR. PAULIN: I think this is the intent
19 of our brief, sir. We feel that there should be a
20 study.

21 9. Commutation of Payments

22 Section 27, subsection 1 of the Act says:-

23 "Where the compensation is payable by an
24 employer individually or out of the
25 accident fund, the Board may commute the
26 weekly or other periodical payments pay-
27 able to a workman or dependant for a
28 lump sum, and may charge the same to the
29 employer or to the accident fund, as the
30 case may be."



1 One of our association members has
2 suggested that where the commutation of periodic pay-
3 ments for permanent disability is made, the charge
4 against the employer's company record is made on a lump
5 sum basis in the year in which the commutation was made.
6 It is suggested that where such a lump sum commutation
7 is made, the charge to the company record should be
8 prorated over the same period as the commutation.
9 Since the advent of the double assessment aspect of
10 the Act, the charge of a lump sum payment in one year
11 could show the company to be in a deficit position.

12 THE COMMISSIONER: Well, lump sum pay-
13 ments are only made in connection with minor injuries,
14 aren't they?

15 MR. PAULIN: Mr. Nicholls, didn't you
16 have a historical background on that?

17 MR. NICHOLLS: No, sir.

18 THE COMMISSIONER: Capitalizing the cost
19 of a back injury with what were called lump sum pay-
20 ments, as I understand it. I may be wrong, but I
21 understood lump sum payments to be a payment to an
22 injury in full washing out for the future, any monthly
23 or yearly payments for his disability. I also under-
24 stood that that was restricted to claims of under 10
25 percent, am I correct, Mr. MacDonald?

26 MR. MacDONALD: You are correct, Mr.
27 Commissioner.

28 MR. PAULIN: One of our members did
29 complain on this. He was afraid it had a tendency
30 to throw him into this category of double assessment



1 which occurs in any three years' total.

2 THE COMMISSIONER: I think maybe Mr.
3 MacDonald could say something about it, but I would
4 suspect that he is talking about the capitalization of
5 the back injury to take care of the month by month
6 assessment throughout the years to come. Have you
7 anything to say on that, Mr. MacDonald?

8 MR. MacDONALD: Mr. Commissioner, I am
9 sure that is what we would be talking about. I will
10 be commenting later about our administration of that
11 section and I think what these remarks that this group
12 is presenting are unfounded.

13 THE COMMISSIONER: They are commenting
14 that the double assessment could result in their
15 being put out of business.

16 MR. MacDONALD: Our administration of
17 this section is not intended to do that. It is not
18 a fund raising section.

19 THE COMMISSIONER: It is a penalty
20 section to try and make them improve.

21 MR. MacDONALD: It is an attempt to
22 get them into a good accident prevention programme.
23 When it does that, we cancel the assessment.

24 MR. PAULIN: Thank you, sir.

25 10. Liability of Principal to Pay Assessments

26 Section 10 of the Act provides for
27 liability and reimbursement to the Board by the
28 principal in the event of non-payment. It should be
29 noted that in construction, a principal contractor,
30 before final payment of the holdback, is required to



1 produce a Workmen's Compensation Board certificate
2 which shows that he is in good standing with the
3 Board as far as payment of compensation is concerned.
4 In addition, and to protect himself, the principal
5 contractor requests a similar certificate from the
6 Board to ensure that the subcontractors are in good
7 standing with the Board. In view of the collection
8 of compensation on an annual basis, the Board while
9 issuing the certificate of good standing, is not
10 really in a position to state whether the contractor
11 or subcontractor is in fact in good standing with the
12 Board until the annual payment is made. As a conse-
13 quence, and because of the liability of the principal
14 under this section of the Act, claims can be made on
15 the principal for non-payment, and the Board has many
16 times exercised its prerogative in this respect.

17 We respectfully suggest that the inquiry
18 look into the aspects of this section in order to
19 determine what procedures can be set up which will
20 protect the interests of the principals so that they
21 are not saddled with a liability which they cannot
22 conceivably control. In fact, the onus of responsibil-
23 ity for non-payment should rest with the Board.

24 THE COMMISSIONER: Well, we will have
25 to hear from Mr. MacDonald on this. What was the one
26 we had yesterday, Mr. Guthrie? Was it yesterday from
27 one of the construction associations in which they
28 were talking about these fly-by-night operators?

29 MR. GUTHRIE: That was A. and T. Wrecking,
30 I think, Mr. Commissioner.



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1 MR. PAULIN: Mr. Nicholls, one of our
2 representatives has a personal case of his own company.

3 THE COMMISSIONER: I will hear him in
4 just a moment. I just want to check on this. They
5 talk about too many losses in the department collecting
6 offices. They know of actual cases where firms
7 who have had a bad accident history have quit one
8 business and started under a new name just to write
9 off their past history. In the demolition trade
10 only a few large firms have been in business under
11 the same name for many years bringing a lot of one-man
12 operations with no assets. Due to the collecting
13 policy of the Department, the money of these firms
14 all has to be written off and the accident had to be
15 paid by the large demolition firms.

16 To correct these faults, they suggest
17 that compensation fees should be collected monthly,
18 not yearly.

19 MR. PAULIN: I believe we would support
20 that idea too, sir. It would be more accurate. At
21 least quarterly.

22 MR. GUTHRIE: Are there any other
23 procedures that you can suggest, having regard to the
24 paragraph at the top of page 14, Mr. Paulin? More
25 regular collections would be one, I take it.

26 MR. PAULIN: That is correct, sir. May
27 I, Mr. Commissioner, ask Mr. Nicholls to tell his
28 personal case?

29 THE COMMISSIONER: Yes.

30 MR. NICHOLLS: Mr. Commissioner, we have

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1 have had unfortunate cases where sub-contractors have
2 gone into bankruptcy. The information on the certifi-
3 cate from the Workmen's Compensation Board stated that
4 they were in good standing, but, unfortunately, it was
5 well out of date and, in their bankruptcy, in fact,
6 they were in arrears and we were assessed many thousands
7 of dollars. If we had had even quarterly reports or
8 certificates on their standing, it would have made a
9 great difference, sir.

10 MR. GUTHRIE: Do you complain of any
11 lack of enthusiasm on the part of the Board in pur-
12 suing bankruptcy claims and do you think anything more
13 can be done in following up collections? Are their
14 collection practices rigid enough?

15 MR. NICHOLLS: Sir, I don't think that,
16 really, the contractors should have been assessed
17 because the Board did not give us up-to-date informa-
18 tion.

19 THE COMMISSIONER: It is not only the
20 Board not giving you up-to-date information. If the
21 Board collected more frequently, then they would have
22 made that collection and it would not have been
23 assessed against you?

24 MR. NICHOLLS: That is correct.

25 THE COMMISSIONER: I don't follow you
26 in what you are saying right now, though, that if
27 they had given you this information, you could have
28 done something about it?

29 MR. NICHOLLS: No, really, it is the
30 other way.



1 MR. PAULIN: If they knew they were in
2 arrears they probably would not have been awarded the
3 contract.

4 THE COMMISSIONER: Before you award a
5 contract, you demand a certificate, do you?

6 MR. PAULIN: We would like to have up-
7 to-date information where we could say "Are you paid
8 up?" and check with the Workmen's Compensation Board
9 and, in fact, prove they were paid up because if they
10 are not, we know there is something the matter.

11 MR. GUTHRIE: Just on that point, Mr.
12 Paulin, when you let a sub-contract, do you, in fact,
13 make a search through the Board?

14 MR. PAULIN: Not at the present time,
15 there is no use in it. It is still a year in arrears.
16 It is like many other reportings we get. We check
17 as quickly as we can. The chaos in closing a tender
18 by a general contractor always is something to behold.
19 We try to make a check on their financial worth. We
20 can do it through the bank, Dun & Bradstreets or
21 other agencies of this kind. If it is not taken as
22 of up-to-date it is useless, because a man with a
23 3-A rating six months ago can be on the ropes today.

24 MR. GUTHRIE: All the Board can give
25 you is the last twelve month payment record?

26 MR. PAULIN: It is on an annual basis
27 so it is much in arrears as to what the man's status
28 is today, particularly with smaller sub-contractors.
29 The bankruptcy ratio in our industry indicates this,
30 sir.



1 MR. GUTHRIE: And these sub-contractors
2 make their payment once yearly only, is that correct?

3 MR. PAULIN: Yes.

4 MR. GUTHRIE: So, if nearly twelve months
5 have passed since the last payment date, that informa-
6 tion is not of much assistance to you to know if it
7 was paid or if you knew it was going to be paid. If
8 you knew it, that does not tell you much about the
9 sub-contractor?

10 MR. PAULIN: The information we get
11 from the Workmen's Compensation says, in fact, they
12 are in good standing and so we proceed to close off
13 the tender and do everything proper under the closure
14 of a contract, but rather than the onus being placed
15 on the Workmen's Compensation Board to say that their
16 information was wrong, they say "Sir, this fellow
17 went out of business and we want you to pay his
18 back arrears." This where the inaccuracy comes.

19 THE COMMISSIONER: That is what you
20 are complaining about. You would also appreciate
21 the other for your own purpose.

22 MR. PAULIN: Certainly.

23 MR. GUTHRIE: I think we understand
24 your point.

25 MR. PAULIN: Thank you.

26 To sum up, gentlemen.

- 27 1. We recommend that no further legislative restrict-
28 ions be placed on the operations of the Construct-
29 ion Safety Association. We affirm that employers
30 should continue to have a primary voice in its



1 affairs.

2 THE COMMISSIONER: Is that the last
3 thing that you are going to say about that?

4 MR. PAULIN: Yes, sir. Would you like
5 me to elaborate on that?

6 THE COMMISSIONER: Is there someone
7 here who is qualified to speak about it?

8 MR. PAULIN: I guess I can ^{well as} as/anyone.
9 I appeared before The Honourable Mr. Rountree with
10 Mr. Black about a year and a half ago, and it is the
11 feeling of our industry that this is an educational
12 body. They are not given any power of regulation.
13 They have in our estimation, by the way, paid for
14 by our payroll dollars, a section of the Workmen's
15 Compensation, they have with a group of
16 experts under a board of construction people set up
17 a programme of education which pays definite respect
18 to the different ethnic groups which are in the con-
19 struction industry. They have had a very fine field
20 organization --people who came out again on a volun-
21 tary basis to train our people in the field and they
22 have conducted many courses throughout the year which
23 is on the record to try to allow us to educate the
24 worker on the site.

25 The educational programme undertaken
26 by television has had a great impact, we are told
27 by experts, in public relations and people who are
28 able to assist this.

29 THE COMMISSIONER: That is interesting,
30 because there is one brief here which has been with-

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1 drawn from the safety men which says that all the
2 money spent on this publicity is not getting to first
3 base because it has to be done on the grass roots
4 level by co-operation. In the joint safety boards
5 MR. PAULIN: By Joint Safety
Boards, there is a great deal of undertaking by
6 responsible contractors within the framework of this
7 federation who have, in fact, permanent safety people
8 who conduct what is known as tool box safety dis-
9 cussions, particularly on a Monday morning after the
10 boys have been off for a long weekend. This is still
11 a business of the person and if the person has had a
12 fight with with his wife or if he is not feeling too
13 well if I may, he is somewhat more accident prone.

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14 THE COMMISSIONER: I know that to be
15 true from my experience and from what I have seen.

16 MR. PAULIN: What we are concerned with
17 is that we are making a concerted effort and a very
18 sincere effort through the Construction Safety Associa-
19 tion of Ontario, of which all of us are members, in
20 trying to educate and trying to get the workman to
21 operate more socially. In the last few years, we
22 instigated the hard hat, we instituted the safety
23 boots and a lot of these things that have happened.
24 The inspectors who came on our job found these people
25 were actual people who came to inspect ladders to
26 make sure they were safe, etcetera, etcetera -- a lot
27 of things; they had a check list. It was not manda-
28 tory. It was voluntary. They left that list with us
29 and said "Would you please put this into effect".
30 The co-operation of the workmen is essential in order



1 for the programme to be successful, but we have the
2 tools to give the workmen a chance to be a successful
3 operator in our business.

4 THE COMMISSIONER: One of the other
5 criticisms is this divided authority. I mean, in-
6 spection services are in the hands of the Province,
7 the Department of Labour and sometimes it depends
8 upon the municipal authorities, particularly in the
9 construction business -- do they have inspectors?

10 MR. PAULIN: Yes, they do now.

11 THE COMMISSIONER: Then, the inspector
12 makes a recommendation, and you are talking about the
13 inspectors now from the Workmen's Compensation Board.

14 MR. PAULIN: From the Safety Association.

15 THE COMMISSIONER: The Safety Associa-
16 tion -- they, themselves, provide the inspectors, do
17 they?

18 MR. PAULIN: My recommendation at that
19 time, if I may perhaps clarify this, was that they
20 should take an active part in helping to train the
21 municipal inspectors. There was a case in point where
22 a mortician became a safety inspector in one of the
23 geographical areas of this province, so we felt that
24 these people had for years come from our ranks into
25 the Safety Association and these are the logical
26 people to try to put the facts of safety inspection
27 before these new appointees. We have tried diligently
28 to correlate this thing but, as will happen in govern-
29 ment, each section wants to have its own identity and
30 it becomes quite difficult. As I say, there is no



1 enforcement.

2 THE COMMISSIONER: This is one of the
3 things -- I did not complete what I had to say --
4 but, you have inspectors, apparently, on the Workmen's
5 Compensation Board and you have government inspectors
6 in other things, but there is no way of putting a
7 bite into it. If this inspector from the Workmen's
8 Compensation Board makes recommendations about ladders
9 or something else and nothing is done -- we are talking
10 about some construction associations -- you do that
11 and other associations do ---- and there is no
12 authority there to get any action. Any right to get
13 any action rests with the provincial authorities or
14 the municipal authorities.

15 MR. PAULIN: Mr. Cox has some comment
16 on this.

17 THE COMMISSIONER: Yes, but in certain
18 of the other provinces this whole field is divorced
19 from the Workmen's Compensation Board, and it is just
20 looking to the most efficient way of co-operation.
21 It is one of the things we had not started to consider.
22 That comes into consideration at a later period this
23 month and will be gone into very thoroughly. Whether
24 or not there is a more efficient way of achieving the
25 ultimate result than the present diversification of
26 functions would be one of the things to consider, and,
27 if not, what can we give your inspectors operating
28 under the Safety Associations which will permit them
29 to enforce these things?

30 MR. COX: I just wanted to say that the



1 gentleman who just stood up a moment ago is with our
2 group and I am wondering if he could elaborate on
3 what Mr. Paulin said.

4 THE COMMISSIONER: You do not propose
5 to return when this matter is under discussion? If
6 you do, I will hear him then.

7 MR. PAULIN: This is Mr. Gil Sampson
8 who is the Executive Director, and he will probably
9 want to return when this matter is under discussion.

10 THE COMMISSIONER: Well, I would suggest
11 it should be left until that time, at which time I
12 will be glad to hear you.

13 MR. SAMPSON: All I wanted to say is
14 that we have no inspection service in the Construction
15 Safety Association.

16 THE COMMISSIONER: I understood you
17 were only making one appearance here and that is the
18 reason I went into that.

19 MR. PAULIN: 2. It is recommended
20 that there be a general review of the work classifica-
21 tions and the rate structure.

22 3. We recommend that consideration be given to
23 deleting Section 35 from the Workmen's Compensa-
24 tion Act and providing instead that additional
25 moneys necessary to upgrade compensation benefits
26 which occurred prior to the increase authorized
27 by the Legislature be paid by the Government to
28 the Board out of the Consolidated Revenue Fund.

29 THE COMMISSIONER: I did not realize
30 that you went that far. You are not only recommend-



1 ing any future consideration of past pensions be paid
2 from the Consolidated Revenue Fund, but that they turn
3 back the hands of the clock and now produce the money
4 that was taken for that legislative amendment.

5 MR. PAULIN: As far as the terminal
6 date is concerned, I think that is open to agreement,
7 but I would say, where possible, it would certainly
8 relieve a lot of unknown surcharges on our industry.

9 4. It is recommended that every dispute relating to
10 workmen's compensation should be dealt with by a
11 special court or board of arbitration. The board
12 shall comprise, with or without the addition of
13 regular judges, an equal number of employers' and
14 workmen's representatives nominated or appointed
15 to act as adjudicators by their respective
16 organizations, or elected by bodies of employers
17 and workmen. Such adjudication of matters should
18 replace the existing appeal procedure of the
19 Board.

20 THE COMMISSIONER: We have gone beyond
21 our usual time for making a break, so we will adjourn
22 for a short while now.

23
24 ---A short recess.

25 THE COMMISSIONER: Very well, Mr.
26 Paulin.

27 MR. PAULIN:
28 5. We recommend that Section 3, Part Ia of the Act
29 should be changed to read as follows:

30 "...does not disable the workman for a



1 period of at least four working days
2 from earning full wages at the work at
3 which he was employed."

4 6. It is respectfully suggested that if it can be
5 established that compensation has been paid on the
6 basis of false claims, appropriate penalties should
7 be imposed on the claimant, and the Workmen's
8 Compensation Act should adequately provide for
9 penalties in such instances.

10 7. We recommend that Section 21, subsection 5, be
11 deleted and the presumption in paragraph 2 of
12 Section 3 reviewed and the Act contain wording
13 which will provide that it is incumbent upon the
14 workman to report an accident to his employer as
15 soon as practicable after its occurrence and before
16 his compensation claim can be considered.

17 8. We recommend that the Workmen's Compensation
18 Board should alert contractors regarding employees
19 who are having continuous and repetitious injuries,
20 particularly those involving the type of accident
21 which indicate a specific pattern, in order to
22 provide for sharper supervision in the future.
23 This could be in the form of a medical certificate
24 or book.

25 9. We recommend that the inquiry study the question
26 of defining injuries which occur during leisure
27 hours and those injuries which occur during
28 employment.

29 10. We recommend that the inquiry look into matters
30 of rehabilitation to facilitate a return to work



1 of a workman as soon as possible, and also look
2 into the means of providing incentives for an
3 employee to return to work. We recommend the
4 establishment of a liaison between the Board, the
5 company, the Department of Education (if re-train-
6 ing is required), the Unemployment Insurance
7 Commission and the specific craft union (if an
8 employee is a member)to expedite a return to
9 work.

10 11. We recommend that Form 7 of the Workmen's Compensa-
11 tion Board should be reviewed so that it will
12 provide more information to the Board in order to
13 adequately consider a claim.

14 12. We recommend that the inquiry investigate the
15 possibility of reducing compensation allowance in
16 order to provide incentives for a workman to
17 return to a useful role in society and, also,
18 provide procedures which will determine the
19 terminal date for compensation and the commence-
20 ment for unemployment insurance when no work is
21 available.

22 13. We recommend that the inquiry research the
23 practicability of having the amount of compensa-
24 tion paid by the Board reported to the Department
25 of Internal Revenue.

26 14. It is recommended that there be research to
27 determine if OMSIP (where an employee is covered)
28 could incur the medical expenses involved in a
29 compensable injury.

30 15. We recommend that the inquiry study the relation-



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1 ship between Canada Pension Plan payments and
2 pensions under Workmen's Compensation when workmen
3 reach retirement age.

4 16. It is suggested that where lump sum commutations
5 for compensable injuries are made, that the
6 accounting charge on the company's records be pro-
7 rated over the same period as the commutation.

8 17. We recommend that the inquiry review all aspects
9 of Section 10 of the Act to determine what pro-
10 cedure can be set up which will protect the
11 interests of the principals so that they are not
12 saddled with a liability over which they have no
13 control.

14 I would like to add an addendum to our
15 brief which was submitted on August 16th.

16 "Further to our submission of August
17 16th, 1966, we recommend that the
18 Commission consider the advisability of
19 increasing the complement of the Work-
20 men's Compensation Board members to
21 include a representative from construct-
22 ion management."

23 THE COMMISSIONER: Why should the re-
24 presentative of your industry rather than the re-
25 presentative of the motor vehicle manufacturers
26 association?

27 MR. PAULIN: Well, if I may, sir,
28 because of the transient nature of our business,
29 there are many problems which arise which are not
30 foreseen or experienced in a normal operation of



1 manufacturing in the suppliers field. They have, if
2 you will, a complete control of the record with regard
3 to their labour. They have, within four walls,
4 control which we do not have. Because of our trans-
5 ient nature there are many problems which arise
6 particularly in compensation which I think we can
7 contribute to as laymen from experience. I feel our
8 industry, because of the fact we are responsible for
9 a tremendous amount of the economic gross national
10 product of this province, more than three billions
11 per year, that we should have some representation
12 adequately representing our division of the industry.

13 THE COMMISSIONER: There has been a lot
14 of discussion about the composition of the Board.
15 At the moment, there is one member of the Board who
16 comes from the labour field. In practice, the people
17 on the Board, just as they would on a board of
18 directors, should be without interest, without
19 personal interest in the outcome. They should not
20 consider themselves to represent anybody -- labour
21 or management or anybody else. That being the case,
22 the desirability of appointing anybody from one or
23 the other industry or labour is questionable.

24 MR. PAULIN: Will you admit there is
25 a man from labour on the Board and, therefore, why
26 should there not be a counterpart from industry?

27 THE COMMISSIONER: That is one of the
28 suggestions that is made, but it is sought to reach
29 a point where the people sitting on the Board do
30 not consider they are representing labour or industry.

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1 It may be that the Board will have to be increased to
2 five instead of three because it is not very satis-
3 factory to have an even number. It is one of the
4 things we are considering, but this suggestion that
5 they not only represent industry, but represent a
6 particular branch of industry -- if you are it, what
7 would the motor manufacturers say. They are in here
8 with a big complaint. Mr. Osler is in here with
9 another big complaint for the mining industry which
10 is also substantial.

11 MR. PAULIN: I agree. Perhaps the
12 inclusion of more members is advisable, because to
13 remove any stigma of partiality, I would say that I,
14 personally, have given twelve to fifteen years to
15 association work within my industry and, certainly,
16 not for the benefit of my company, but for the
17 benefit of the industry. I feel confident that there
18 are many people in our industry and in the manufactur-
19 ing industry that can be as impartial as any lawyer
20 that may be appointed to the Board. I think it would
21 behove the Workmen's Compensation Board to have
22 this representative cross-section in order to properly
23 deliberate contentious problems, and perhaps satisfy
24 some of the, not inequities, but some of the things
25 that bother us with regard to reporting and liaison.

26 To sum up, sir, we believe these re-
27 in the
28 commendations are/ interests of the Workmen's Com-
29 pensation and its operations.

30 THE COMMISSIONER: You might just
finish reading your whole submission there.



1 MR. PAULIN: Oh yes, I am sorry.

2 "We believe that because construction is
3 one of the largest single industries, it
4 should be represented on the Board to
5 enhance the Board's operations as it
6 pertains to special industry problems.

7 "It is noted that the Chairman of the
8 Board is a lawyer; there is a representa-
9 tive from labour, and a representative
10 from the medical profession. We have no
11 quarrel with the abilities or services
12 provided in the past by these august
13 gentlemen, but note that in the past
14 representatives from manufacturing have
15 been members of the Board but at no time
16 has the Board had representatives from
17 the construction industry.

18 "In order to implement our recommendation,
19 we do not suggest that anybody be
20 eliminated from the Board but rather
21 that it be expanded to provide for a
22 construction industry management re-
23 presentative on the Board."

24 We believe, Mr. Commissioner, that
25 these recommendations are in the interests of workmen's
26 compensation, its operations, and we would be very
27 pleased to have further discussion on the subjects
28 outlined in this brief and on other matters relating
29 to the construction industry at your pleasure.
30



1 In closing we wish to record the
2 Federation's appreciation of the invitation to present
3 this submission, and trust that we will be of continu-
4 ing service to this and future inquiries into workmen's
5 compensation.

6 THE COMMISSIONER: Do you have any
7 questions?

8 MR. GUTHRIE: I have just one or two
9 questions really by way of recapitulation to make
10 sure we understand the submissions in one or two
11 areas, Mr. Paulin. At page 5 of your brief, to come
12 back to the recommendations as to appeal, do I under-
13 stand you to say that this Board of Arbitration idea
14 is to be at the final level of appeal only.

15 MR. PAULIN: Let us say in the make-up
16 or the structure that it be in the final stages of
17 appeal. We are not quarrelling at all with the
18 normal process of administration. It is only in
19 cases where, perhaps, a new group of faces should
20 appear in order to give a new prospective or a new
21 light on the subject, rather than using the same
22 people in another capacity as you progress through
23 the Board's structure. That is a suggestion. We
24 are not telling you how to re-organize the appeal
25 structure but, rather, that it should take some con-
26 siderable examination and possibly give cognizance
27 to the fact that new faces should appear in the final
28 structure.

29 MR. GUTHRIE: On page 14 of your
30 summary, item 4, it is suggested that your proposed



1 method would replace the existing appeal procedure
2 of the Board and that was the other thing I wanted to
3 be sure about. Are you suggesting that these various
4 levels of the internal appeal structure should be
5 done away with?

6 MR. PAULIN: Some of them, but not all
7 of them. In other words, it is subject to review,
8 if I may put that word in. It is subject to review.
9 It is not condemning the structure in its entirety;
10 it is reviewing it so that there might be some
11 impartiality towards the final process.

12 MR. GUTHRIE: But you don't care to be
13 any more specific as to which levels might be moved?

14 MR. PAULIN: I think this is the business
15 of the Board and they are quite capable of doing it,
16 sir.

17 MR. GUTHRIE: Then, turning to page 8
18 of your brief, this is the medical problem. I am not
19 sure that the idea of a medical certificate found
20 much favour with the Commissioner, but, in any event,
21 could I be clear on what you say it should show.
22 Should it give a medical history of the condition of
23 the employee, are you saying that, or just a record
24 of accidents in the true sense?

25 MR. PAULIN: No, in one of the three
26 hundred odd firms that are reporting to the CSAO on
27 a monthly basis so that we can have some more accurate
28 information than waiting on the transition going
29 through the regular channels, "My report is so and so
30 leg - back - so and so." It doesn't have to be a



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1 medical report, it is merely that this man has had an
2 incidence of accidents. As the Commissioner pointed
3 out, we do find some left-footed people.

4 MR. GUTHRIE: That is what you are aim-
5 ing to discover, not the man who comes to you with a
6 pre-existing back condition?

7 MR. PAULIN: If he has had a previous
8 back condition, we would certainly like to know about
9 it because we do not feel that we would want to
10 inherit, first of all, a man who has had a back con-
11 dition on a labouring job. Now, a man with a back
12 condition on a carpentry job is a different thing.
13 He is not doing the extreme lifting that a labourer
14 may. We have to place these men in their proper
15 categories but we should be made aware of the condition
16 of that employee.

17 MR. GUTHRIE: That is what I wanted to
18 establish. You would go farther than just the left-
19 footed man, you would want to know about the man who
20 has a back problem?

21 MR. PAULIN: Absolutely, sir.

22 MR. GUTHRIE: Do your companies
23 generally, or do you know this, require a pre-
24 employment medical examination?

25 MR. PAULIN: No, sir, we have been
26 considering it but it is, again, a
27 administration and if it can be circumvented - may I
28 point out this, that I think most of us in the employer
29 group are quite aware that the greatest percentage of
30 the people who work for us are honest, forthright



1 and diligent men, but this compensation allowance or
2 this compensation budget is being dissipated by a
3 minority in my estimation, and if we can do something
4 to curtail their freedom this, I think, is
5 advantageous to our industry and to everyone concerned.

6 MR. GUTHRIE: I think we understand you.
7 It is just that your proposal may be so sweeping
8 that it takes us a bit aghast. In the first complete
9 paragraph on page 8, you call for some alternative
10 procedures on these medical problems and I think one
11 that you mentioned and I wanted to pursue a bit was
12 that there should be some reporting by the Board of
13 claims and awards made and I understood you to say
14 on an industry-wide basis. Did I hear that correctly?
15 Do you mean that you would want to hear a report of
16 the claims in company X? In your company why would
17 you like to hear about other people's claims and
18 awards?

19 MR. PAULIN Again, personally, I
20 instigated a conclusion in this brief which is
21 covered by this paragraph on this basis: I felt that
22 if a man goes to his doctor the next morning because
23 he can't get out of bed, I don't want the medical
24 report, but I would like that doctor to be obligated
25 to tell me that this man has reported he was hurt
26 on my job yesterday.

27 MR. GUTHRIE: We have got that, but
28 the point here is, did you suggest that the Board
29 ought to tell all the construction companies of
30 all the claims and awards in the industry?



1 MR. PAULIN: Well, this is one way we
2 get our incidence rating, is it not, from these
3 claims?

4 MR. GUTHRIE: As matters now stand, I
5 understand that the non-disclosure provisions of the
6 Act prevent the Board from telling your company about
7 the claims in another company. But, did I understand
8 you to say that you would like to have information
9 about claims in other companies

10 MR. PAULIN: I don't think we
11 are on a witch hunt here. I think what they want
12 from the Board is the information which can be
13 applied to the formulas which govern our rating.
14 that
15 Now, how this can be resolved, is something/the Board
16 has far more experience in than I have, but the very
17 fact that Mr. Nicholls said he has been not prosecuted
18 but has been hurt by not knowing that a sub-contractor,
19 in fact, did not pay his compensation during the
20 past year and he is made responsible for it is an
21 inequity which should be removed. The onus should
22 be on the Board for this and, therefore, it is in the
23 mechanics of it all. I am not an expert on the inner
24 workings of the Workmen's Compensation Board, but I
25 certainly think it would take a great deal of con-
26 sideration by this Commission towards a liaison
27 between the employer and the Board with regard to
28 the standards of that man, his historical background
29 and what kind of assessment may be made.

30 MR. GUTHRIE: That is fine, Mr. Paulin.
We just want to be sure on what specific proposals
you make. All I wanted to know was, are you saying



1 you should know about accidents and claims in other
2 companies in your industry?

3 MR. PAULIN: Only on a general basis
4 I would say. I don't think we want it on a specific
5 basis, sir.

6 MR. GUTHRIE: That is fine. On page
7 12 - and this really bears on the same question of
8 liaison that you have just been talking about - you
9 have told us about the problem of the man who
10 couldn't get up the next morning after the back injury
11 and I think you will let us have that claim number?

12 MR. PAULIN: I certainly will, I have
13 it noted.

14 MR. GUTHRIE: I would like to know in
15 a case where the accident has been properly reported
16 to you, let us say it is an employee of long standing
17 whom you would like to see back in your employ when
18 he is better. In those cases, do you experience any
19 difficulty in getting progress reports from the
20 Board, information as to his recovery?

21 MR. PAULIN: I do not have that much
22 experience, except I can tell you we had a serious
23 injury to one of our long time employees and I attempted
24 to re-hire him even in the capacity of a watchman.
25 He had smashed his ankles, his legs, and everything
26 else in quite a fall and I tried diligently to put
27 him back into a position in the company where he
28 could have a pride in his job and/of use to us and
29 it was almost an impossibility. But I think if we
30 are told the status of this man, there are enough



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1 responsible employers who will co-operate in full to
2 try to get this man back in an industry he knows.
3 If not, then we would to ask to take part in resorting
4 to a re-education programme in the interest of that
5 man who has given us the great years of his life.

6 MR. GUTHRIE: Are you really putting the
7 onus on the Board to report to you?

8 MR. PAULIN: Yes, I would say so, they
9 are the ones who know about it, not me.

10 THE COMMISSIONER: Has your experience
11 not been that they come to you and ask you to try
12 and employ this man on a lighter job?

13 MR. PAULIN: The Board?

14 THE COMMISSIONER: Yes, their Placement
15 Officer.

16 MR. PAULIN: I think the Placement
17 Officers do an admirable job in this respect, sir,
18 but as I say, the conditions of employment quite often
19 govern whether it is possible or not. In a factory
20 they can become a sweeper --

21 THE COMMISSIONER: The Placement Officer
22 does come to you then, does he?

23 MR. PAULIN: In my opinion, he did. I
24 don't speak for the industry because I don't know the
25 case histories of them all.

26 THE COMMISSIONER: Then they do make an
27 effort to try and place them with your company?

28 MR. PAULIN: They do.

29 THE COMMISSIONER: That is the first
30 one. Now, the second one is the matter you are going



1 on with now, the question of whether there is any
2 training to try and fit him into a lighter job.

3 MR. PAULIN: Something other than our
4 industry because we are an outdoor operation as
5 constructors. I was going to say in a factory a man
6 can quite often be relegated to perhaps a washroom
7 attendant or something of this kind, whereby he does
8 not have heavy work. In our industry, this is most
9 difficult. A man can't work so he doesn't.

10 THE COMMISSIONER: So what you say is
11 he should be trying to work elsewhere?

12 MR. PAULIN: That is correct, sir.

13 THE COMMISSIONER: Have you any knowledge
14 of whether he is being trained to work elsewhere or
15 whether he isn't?

16 MR. PAULIN: No, I haven't but, as I
17 say, we would give him the co-operation if the Board
18 asked us for this liaison. That is what the industry
19 is actually saying to you, that we will give this
20 co-operation if we are asked to do so if, in our
21 opinion, he is not employable in our industry.

22 THE COMMISSIONER: What co-operation
23 are you referring to? MR. PAULIN: you suggested to
24 me, sir, that there was an educational programme.
25 I am not aware of this complete educational programme.
26 Perhaps we should be educated as to what the educational
27 programme is and what we can do to help.

28 THE COMMISSIONER: I understand you now.

29 MR. GUTHRIE: Just one other thing,
30 Mr. Paulin. On that same page, although it is not



1 referred to in your brief, I think at that point you did
2 make a reference to a deficit balance which is rather an
3 alarming thing to me and I wonder if you would just
4 clear the record on that point.

5 MR. PAULIN: You are very observant. I,
6 perhaps, was being a little facetious on that statement,
7 if
8 but it is my understanding, it is not a fact (I know
9 this) that this Workmen's Compensation budget has been
10 gradually declining over the years and it is alarming to
11 me as an employer that it is not building rather than
12 declining, and I think serious consideration should be
13 given as to the disposition of moneys so that we do have
14 a building fund rather than a depleting fund.

15 THE COMMISSIONER: I really don't under-
16 stand this.

17 MR. GUTHRIE: It is a pay as you go plan,
18 is it not?

19 THE COMMISSIONER: Except for capitaliza-
20 tion --

21 MR. PAULIN: I am talking about knocking
22 down the rates instead of increasing them. I understand
23 it is a pay as you go proposition, but we are given
24 increasing rates, we are talking about double assessment.
25 What is the reason for double assessment if it isn't
26 that we are operating in a deficit position or seem to
27 be?

28 THE COMMISSIONER: You are being assessed
29 except for capitalization of such things as back injuries
30 or permanent injury on a year to year basis as far as
current expenses are concerned. It may have to be brought



1 up to what their experience is six months later, or
2 something like that. I don't know what fund you are
3 talking about that is depreciating. What fund do you
4 refer to?

5 MR. PAULIN: We are in arrears. In fact,
6 we are in arrears as far as the moneys coming into the
7 Board are concerned. We on a double assessment are
8 assessed over a period of years on the average. This
9 answers that problem, but the fact that we are entering
10 into a double assessment thinking by the Board means
11 that we are not adequately supplying the Board with
12 moneys in order to take care of the compensable injuries.

13 THE COMMISSIONER: I would like you to
14 probably present to us or had you done so, we would have
15 made the same inquiry we did in connection with the
16 Motor Vehicle Manufacturers' Association and that we
17 did in connection with the Mining Association, and it
18 would indicate what relation these statistics had to
19 the various other things that have gone up - the cost
20 of medical attention, the result of the amendment of
21 1965 which brought all past pensions up and assessable
22 against current employers and all of that capitalization
23 has been amortized over the next ten years apparently.
24 Now, that enters into your budget all the time. But
25 when you talk about the double assessment, is it actually
26 200 percent of what it was in 1963?

27 MR. PAULIN: It is a formula which is
28 being applied to the accident ratio in my understanding
29 over a three-year period. If you exceed the formula
30 you are subject to double assessment.



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1 THE COMMISSIONER: I understand now, this
2 is a penalty assessment that is going on?

3 MR. PAULIN: That is right.

4 THE COMMISSIONER: Well, we have heard
5 from Mr. MacDonald that the penalty assessment goes on
6 and then if your record improves - this goes against
7 individual employers, not against the industry as a
8 whole.

9 MR. PAULIN: That is correct.

10 THE COMMISSIONER: And if the record of
11 the individual employer improves, then the penalty
12 assessment is revoked or can be.

13 MR. PAULIN: I don't wish to start a
14 question and answer period with Mr. MacDonald,
15 but my understanding of a presentation at one of our
16 conventions a few years ago, it was almost
17 mandatory that we appeal immediately because without
18 appeal we are subject to payment and it is just an
19 automatic thing to appeal and then wait for this
20 transition period, but if we don't, we are subject
21 under law to the payment of that double assessment.

22 THE COMMISSIONER: That may be. The only
23 other thing that occurs to me is that so far as the
24 other members of your own industry are concerned, it
25 seems to me, speaking for the industry as a whole, the
26 majority of your members would approve of this rather
27 than disapprove of it because it would bring down their
28 overall assessment in the end if the general accident
29 record of the Association could be improved by reason
30 of the fact that the man who was out of step gets back in.



1 Obviously, that is the purpose of it. I didn't know
2 what you were talking about when you were talking about
3 the double assessment. I understand now.

4 MR. GUTHRIE: I think that is all I have.
5 Thank you, Mr. Paulin.

6 THE COMMISSIONER: There is one other
7 thing I wanted to ask: Did I understand you to say that
8 the certificates about them being up to date on the pay-
9 ment of assessments are only issued once a year?

10 MR. COX: These certificates are asked
11 for at the end of a project by the architect on behalf
12 of the owner.

13 THE COMMISSIONER: The Board will give
14 you a certificate any time you ask for it?

15 MR. COX: That is right, but it is only
16 at that time that it shows he was in good standing.

17 THE COMMISSIONER: Well, you could ask for
18 it at the start of the project instead of at the end,
19 couldn't you, if it is available anytime?

20 MR. COX: The architect wants it at the
21 end of the project.

22 MR. PAULIN: I think the information is
23 only a record once a year, so if we ask for the record
24 it can apply to the whole calendar year to all these
25 projects.

26 THE COMMISSIONER: As long as that is
27 the situation and not that they will give you the record
28 at the moment as of that date.

29 MR. PAULIN: I don't think they will,
30 sir.



1 THE COMMISSIONER: I see, thank you very
2 much. We will hear from Mr. MacDonald when he goes in
3 the box this afternoon or tomorrow.

4 MR. GUTHRIE: Mr. Commissioner, on this
5 topic we have remaining the supplementary brief of the
6 Ontario Medical Association which was read into the
7 record yesterday, but there is a representative here
8 who would like to make a brief comment on it. We also
9 have the submission on this topic of the International
10 Nickel Company. I am wondering if Mr. Osler would mind
11 if we asked the doctor to take a moment to speak to his
12 brief because I think he intends to be quite short.

13 THE COMMISSIONER: This brief was read in
14 yesterday?

15 DR. SAWYER: Yes, I will not read it, Mr.
16 Commissioner. I just wanted to emphasize the three points
17 that we made in this presentation. The work of the
18 Compensation Board, as we understand it, is divided into
19 two parts: One, the payment of compensation and pensions,
20 and the other the rendering of medical aid to the injured
21 workman. Therefore, every claim that comes/becomes the
22 responsibility of the Board arises out of an accident or
23 illness for which the Board accepts responsibility, and
24 it seemed to us that it was paramount that there should
25 be on the Board one representative who had special
26 knowledge of the medical aspect as it is a very large
27 part of the Board's responsibility.

28 Secondly, as the appeal structure is
29 made up today, the Board becomes the final level of
30 appeal, and as there is no subsequent appeal to the



1 courts, I think that it has a special responsibility to
2 see that justice is done as much as it can. Now, before
3 that final appeal by the Board, I understand it is really
4 a new hearing, that they do not use the evidence from
5 the Appeal Tribunal. Therefore, again, it seemed to us
6 important that there should be one member of the Board
7 who had knowledge and appreciation and could interpret
8 the medical testimony given at the final hearing by the
9 Board.

10 Finally, there has been a member of the
11 medical profession on the Board for some twenty-five
12 years, and in going back over the history of our associa-
13 tion, it is rather interesting that before there was a
14 medical member on the Board, meetings of our council
15 seemed to be taken up in part, at least, by criticism
16 and so on, of the Workmen's Compensation Board. During
17 the last twenty-five years, the co-operation between the
18 Board and the profession has certainly improved, at at
19 the present time we have meeting after meeting go by
20 without the subject of the Compensation Board being
21 raised at all. I think this happy circumstance, Mr.
22 Commissioner, is due to the fact that we have had good
23 medical representation on the Board, and our recommenda-
24 tion is that there should be one member of the medical
25 profession on the Board. I know you will have different
26 recommendations about who should be on the Board. You
27 discussed it during the last presentation, but all we
28 wanted to say is that when your recommendation is made,
29 we feel very strongly there should be a member of the
30 medical profession on it.

THE COMMISSIONER: It seems reasonable.



1 Obviously, the two things that are under discussion, one
2 is the medical evaluation and the other is the job
3 valuation -- one or either.

4 MR. GUTHRIE: I have just one question,
5 Doctor: In one brief, and I think it was the Ontario
6 Mining Association, it was suggested that the medical
7 member of the Board be a non-voting member; in other
8 words, an adviser really, and would not take part in
9 the vote on any question. What would you say to that
10 suggestion?

11 DR. SAWYER: Well, I think a Board should
12 be comprised of voting members, and I think that any
13 member of the medical profession has sufficient knowledge
14 of matters generally that he should be a voting member of
15 the Board.

16 MR. GUTHRIE: Thank you, Dr. Sawyer.

17 THE COMMISSIONER: Thank you.

18 MR. GUTHRIE: We will now call Mr. Osler
19 for the International Nickel Company of Canada.

20 MR. OSLER: Mr. Commissioner, we only
21 have one section dealing with this in our brief and
22 that relates to the Constitution of the Board which
23 appears at page 15. It is just a single page, and I
24 think I might read it.

25 At this point this Company wishes to
26 compliment the various Boards over the years for the
27 able manner in which the Act has been administered.
28 From time to time both industry and labour have had what
29 might be called direct representation on the Board
30 although not necessarily at the same time.

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1 If members of the Board are to be re-
2 representative then both industry and labour should be
3 represented equally and certainly not one to the exclus-
4 ion of the other. It is submitted that it is of primary
5 importance that any possible ground for thought of
6 prejudice or bias should be eliminated.

7 Where the Board is established with re-
8 presentation from industry and labour, then it is sub-
9 mitted that the Chairman should be representative of
10 neither industry nor labour and preferably should have
11 legal qualifications. However, provisions of the Act
12 relating to the Board, namely, sections 54 and subsequent,
13 would require amendment to provide, amongst other things,
14 the presence of three members to constitute a quorum and
15 for flexibility, alternate members at least for those
16 members representative of industry and labour. Inasmuch
17 as it is undoubtedly invaluable to the Board to have the
18 assistance of a medical doctor, it is also suggested
19 that provisions be made for a medical doctor as a non-
20 voting member or alternatively as a special advisor who
21 would be available during any hearings or deliberations
22 of the Board.

23 In this section, sir, we have not attempted
24 to enlarge or elaborate on it too much. I think there
25 is no doubt that we would far prefer a non-representative
26 Board, but the fact remains, as we have heard before in
27 these hearings, of references to the labour appointee,
28 and I think one person referred to it that they could
29 use the labour representative as a pipeline. Certainly,
30 if the Board is to be composed of people who are in any



1 way representative, then both industry and labour should
2 be represented. To do that, of course, does involve a
3 different constitution of the Board insofar as hearings
4 are concerned. I admit you have the problem here of a
5 Board which is that of directing a large organization
6 in its functional duties in that respect, and then,
7 in the appellate situation they are dealing with the
8 question of hearings. For that reason, I would think
9 the establishment of a Board, such as the Labour
10 Relations Board, where you have various divisions and
11 numerous members who are not full time employees, would
12 be not necessarily the current method to adopt. However,
13 if there is going to be representation by industry and
14 labour, in other words, if the members of the Board are
15 going to be representatives, then I think you are going
16 to be forced at least to have a four-member Board with
17 a Chairman and a Vice-Chairman who are probably in the
18 non-representative category, with a member from industry
19 and a member from labour who might be permanent employees,
20 and then revert, as far as your alternatives are con-
21 cerned for the purposes of hearings before the Board,
22 where you might have one or other of the permanent
23 employee representatives absent, draw on these alternative
24 members to fill in the Board for the purposes of hearings
25 only. Certainly, at this point, in that kind of organiza-
26 tion, I have not dealt with the medical representative,
27 and I think there can be no doubt that a member of the
28 medical profession should be very, very closely associa-
29 ted with the deliberations of the Board. At the very
30 least, they need that advice to be able to interpret



1 the medical reports and the evidence which would be
2 submitted in the hearing.

3 THE COMMISSIONER: I suppose you would be
4 satisfied if the representative of industry was appointed
5 as such, that he be a member of the Construction Associa-
6 tion.

7 MR. OSLER: I am not nominating or suggest-
8 ing that it be necessary for the mining industry. No,
9 I think it has got to be a person who is representative
10 of industry, without naming any particular industry. I
11 am not sufficiently aware of the specialties and peculiar
12 problems which arise in the construction industry as
13 have been suggested. I feel that, certainly, every
14 industry has its own peculiarities. I suggest there
15 are many peculiarities which exist in the mining industry
16 which people outside the mining industry have no knowledge
17 of. I think that every branch of industry has got to
18 realize that if they are going to have their representa-
19 tive of industry on a Board such as that, they cannot
20 all be represented.

21 MR. GUTHRIE: Mr. Osler, in the case of
22 a non-representative Board, without this industry and
23 labour idea, what would you say as to the medical man.
24 Should he be a voting member?

25 MR. OSLER: I think it is true to say
26 that if you can achieve the non-representative Board --
27 and I am afraid our brief has gone on the basis that
28 that is something over the dam -- if you can achieve a
29 non-representative Board, then, certainly, a medical
30 representative should be on the Board, I would think.



1 THE COMMISSIONER: The present balance
2 might not be too bad in this respect, that you have got
3 one man who represents labour, and you have got two
4 other people from a non-labouring class. I mean the
5 doctor and the general manager.

6 MR. OSLER: I think the very point, sir,
7 surely is that if you are going to deal with the question
8 of a representative at all, then I think if you are
9 having a person who is representative of labour, that
10 I think you must match him against a person representative
11 of industry, because that person has had the experience
12 in dealing with the problems of accidents and so on on
13 the opposite side from the representative of labour. Now,
14 your non-labourer or non-industrial man, be he ever so
15 capable ---

16 THE COMMISSIONER: Well, the labour man
17 is drawn from the ranks of labour and it is assumed he
18 will accept the same responsibility that the others do
19 and will try and reach a just decision. By and large,
20 there has not been too much criticism of the labour
21 member. He is not alone in that post; he has two other
22 people.

23 MR. OSLER: Well, if I may interrupt at
24 this point, I certainly am in no way intending to
25 criticize the present member in any way, shape or form.
26 However, individuals change and they may change over the
27 years, and one never knows, and it is looking into the
28 future that I think industry should be entitled to a
29 representative on the Board.

30 THE COMMISSIONER: It seems to me you



1 might make the matter worse by saying that somebody on
2 this Board has to represent one section and somebody
3 has to represent another section. At the moment, there
4 does not seem to be that particular feeling on the Board
5 amongst the Commissioners, and it might not be a badly
6 balanced Board the way it is, though I think it probably
7 should be stated that it is desirable when a man is
8 chosen from the ranks of labour that he should not be
9 thought to be a labour representative.

10 MR. OSLER: I think by the unions, sir --
11 and I was very interested in the course of hearing your
12 hearings, the gentleman has been described as "The
13 labour appointee" - not representative, but as the labour
14 appointee and as the labour pipeline. Those are pretty
15 descriptive appellations.

16 THE COMMISSIONER: He was the pipeline
17 for awhile but we are told he no longer is.

18 MR. OSLER: They are objecting to the
19 fact that the pipeline has been cut off, but I think
20 just on that basis, certainly we think a non-representa-
21 tive Board would be ideal. Certainly, that is the idea,
22 but if you are going to have representation, then I
23 very strongly suggest that both sides, you might say,
24 should be equally represented and not one to the exclusion
25 of the other.

26 THE COMMISSIONER: Well, you have got
27 what you call a non-representative Board. Supposing we
28 start all over and we are going to appoint a completely
29 new Board. Well, who are they going to appoint? Are
30 they going to appoint everybody from people who live up



1 above St. Clair Avenue, or are they going to appoint
2 somebody from the west end who works in a factory?
3 You can do your best to try to make it independent, but
4 if they are not the kind of people who will be independ-
5 ent, then they are going to have prejudices when they
6 get there. Anyway, thank you, Mr. Osler.

7 MR. OSLER: The only other thing is the
8 question of quorum. This, of course, comes into this.
9 The present quorum is two.

10 THE COMMISSIONER: It might ease the work
11 of the Board too if they had a five-man Board and they
12 proceeded by a quorum. There is a quorum of two now,
13 isn't there?

14 MR. OSLER: Yes, a quorum of two, section
15 63. "The presence of two members is required to con-
16 stitute a quorum."

17 This is in relation, sir --

18 THE COMMISSIONER: I suppose by reason
19 of their work, they usually sit as a Board of two?

20 MR. OSLER: That I could not advise you
21 on, sir. I have not appeared before the Board in their
22 new proceedings, so I am not sure, sir.

23 MR. GUTHRIE: Mr. MacDonald informs me
24 that it is generally three who sit.

25 MR. OSLER: Mr. Young advised me that
26 the last two hearings he had been at the last short
27 time he has only had two members.

28 Sir, this is not on this Constitution of
29 the Board, but purely relates to some discussion that
30 arose earlier in regard to this matter of reports from



1 the Board and comments on the question of assessment.
2 Section 113 provides for this lien and I know that even
3 the legal profession has had difficulty in obtaining
4 what might be called a true, full and utter discharge
5 from the Workmen's Compensation Board which could be
6 of any legal assistance.

7 THE COMMISSIONER: This was with reference
8 to the production of the certificate at the end of the
9 period?

10 MR. OSLER: Yes, that is right, sir.

11 THE COMMISSIONER: I don't know what good
12 a certificate would be if it only referred to something
13 that happened the year before.

14 MR. OSLER: That is the problem, sir.

15 THE COMMISSIONER: I can't believe that
16 that is the case. Thank you.

17 MR. GUTHRIE: Mr. Commissioner, unless
18 there is any other party having a submission to make on
19 these subjects, I suppose we should return to the
20 submission by Mr. MacDonald on behalf of the Board.
21 Is there any other point to be raised? Mr. Kennedy?

22 MR. KENNEDY: Mr. Commissioner, our
23 brief did not deal specifically with the matters on
24 the agenda at the present time. However, in the course
25 of the discussion, and perusal of other briefs, there
26 are some things I would like to say particularly in
27 relation to point III under Financial Matters
28 which I trust will be of some assistance to the Comm-
29 ission. On the question of investment of Board funds
30 we are quite sure that the legislation and the government



1 is not going to get into any wildcat schemes. Their
2 money could be lost and we are quite happy that that will
3 be well taken care of.

4 However, I think that point (III) is one
5 of the more important matters to come before the Comm-
6 ission and there has not been too much discussion on the
7 question so far on the relationship of compensation to
8 other benefits. We have had some discussion that,
9 because of contracts or arrangements made, there
10 might be some duplication of payment as far as compensa-
11 tion for hospitalization is concerned and that both the
12 employers and the employees in paying for hospitalization
13 may be paying for some service which they are not getting.

14 I want to raise this question, Mr. Comm-
15 issioner, and perhaps more information can be obtained,
16 but it seems to me that when the actuaries or the people
17 responsible / ^{considered} the inauguration of the Ontario Hospital
18 Plan, they must have, in fact, taken recognition of
19 ^{at} what were/that time assured payments to the hospitals
20 and the province. When we check ~~the~~ the figures which we
21 have received from the very capable people from the Board,
22 we see that the payments to hospitals out of the compensa-
23 tion fund under the main sub-heading of Medical Aid are
24 very substantial, and I cannot visualize that these pay-
25 ments were not taken into consideration at the inaugura-
26 tion of the funds when the rates of payment by partici-
27 pants were set.

28 THE COMMISSIONER: You are talking about
29 the Ontario Hospital Plan?

30 MR. KENNEDY: Yes.



1 THE COMMISSIONER: Obviously, the Ontario
2 Hospital fund rate is based on payment other than those
3 for compensation cases?

4 MR. KENNEDY: Yes, that would seem to be
5 my feeling on the thing, and the same principle would,
6 in all probability, be true in respect of PSI and plans
7 of this nature, that when PSI set their rates, it would
8 be with the knowledge of the guaranteed payment which
9 they in prior years received from the Compensation Board.
10 So it seems to me, then, that there would be no duplica-
11 tion of payment or the employers and the employees in
12 this respect would not be paying for some service that
13 they were not receiving.

14 Also, on the question of pensions, there
15 has been some suggestion that there be some study made
16 as to the effect of the Canada Pension Plan and service
17 pensions being duplicated by the employers --

18 THE COMMISSIONER: I think, Mr. Kennedy,
19 I can tell you that I think it is something that should
20 be considered by another body than this. I think that
21 sufficient has been said and we are in sufficient doubt
22 as to the situation and also by reason of the fact that
23 it has to be by some consultation between the Federal
24 and Provincial authorities. It is one of the things
25 that I am going to make a strong recommendation on that
26 it be considered elsewhere, but it is not one with which
27 I am going to seek to deal in this Inquiry.

28 MR. KENNEDY: There is just one point
29 that may be helpful in making such a recommendation, Mr.
30 Chairman, and that is that at the present time, to one



1 degree or another, when an individual is receiving a
2 service pension from an employer, particularly if it is
3 a pension which is non-contributory by the employee,
4 then if an individual gets into a position where he
5 would be drawing a service pension through disability
6 or normal retirement and also drawing a pension from the
7 Compensation Board, then the employer will, to one degree
8 or another, deduct from his service pension the amount
9 which he gets from the Compensation Board. Therefore,
10 if a man does get a compensation pension, his payment
11 is not increased at all by that because of the fact that
12 the employer, in some instances that I am aware of, does
13 deduct that amount from the service pension.

14 On the question of compensation as related
15 to other benefits, I have, in front of me, Mr. Chairman,
16 a summary drawn up by the Mercer Organization. This is
17 an organization which is recognized as being reliable
18 and certainly I do not think can be classed as pro-
19 employer or pro-labourer; it is a service that they
20 provide. In this survey they show the costs of all of
21 these items.

22 Now, this summary which I have in front
23 of me, is from 1962 and when I give you the figures for
24 compensation, no doubt these figures will be less than
25 the present day rates, but I would say that in comparison
26 the other items would be correspondingly higher than
27 they were in 1962. I understand that they will have --

28 THE COMMISSIONER: I don't understand what
29 you are seeking to give us, or what the point is.

30 MR. KENNEDY: When we say the relationship



1 of compensation to other benefits, I am talking about
2 compensation and the other benefits which / ^{are} dealt with
3 specifically in this document which I have in front of
4 me, Mr. Chairman.

5 THE COMMISSIONER: I see.

6 MR. KENNEDY: This is for 1962 and it
7 shows that the cost of Workmen's Compensation in Canada
8 was .6 percent of the payroll, Unemployment Insurance
9 was .6 percent, Old Age Security was 1.5 percent, Welfare
10 Benefits was 3.6 percent, Group Sickness Benefits Life
11 Insurance was 2.1 percent, other benefits 1.7 percent.

12 Then, Vacations, 4.1 percent, Holidays,
13 2.6 percent, Rest Periods, 3.3 percent and other times
14 .6 percent. This table does show that the total cost
15 of what was considered to be all fringe benefits is
16 22.2 percent. In relation to all of these benefits,
17 Workmen's Compensation is .6. Therefore, if we take
18 all the benefits, it would seem at first glance that
19 compensation is a terrific cost to the employer; but
20 if we take all the benefits combined, we show that
21 compensation is actually about one fortieth of the total
22 cost of the benefits which are now in existence.

23 I wished to make these points; I thought
24 it was proper to bring them up in the relationship of
25 compensation to other benefits, Mr. Commissioner, and
26 I thought it might be helpful to the Commission to at
27 least demonstrate that in the overall picture, compensa-
28 tion benefits are a relatively small part of what is
29 considered to be benefits for employees.

30 THE COMMISSIONER: Thank you, Mr. Kennedy.



1 MR. GUTHRIE: Did you say those figures
2 were for 1962?

3 MR. KENNEDY: 1962. I think there are
4 later tables, and I will try and get some.

5 MR. GUTHRIE: And you will just file them
6 with this?

7 MR. KENNEDY: Yes.

8 THE COMMISSIONER: We will adjourn until
9 five minutes past two.

10 ---Luncheon adjournment.

11
12 MR. ESTEY: Mr. Commissioner, before we
13 hear from Mr. MacDonald on the topics which he has not
14 yet covered on these final two subject matters, Mr.
15 Koskie has some words to say with respect to assessments
16 on behalf of the Labourers' Organization.

17 THE COMMISSIONER: What assessments are
18 those?

19 MR. KOSKIE: I am referring to employer
20 contributions in particular, Mr. Commissioner.

21 THE COMMISSIONER: And you state
22 as to why the Labourers' Union is concerned?

23 MR. KOSKIE: Well, the Labourers' Union
24 is not concerned as one would think, but it does have
25 certain submissions to make in relation to the employers'
26 contributions which have some concern with the safety
27 and accident prevention which we will deal with later,
28 but since we are dealing with financial matters, I do
29 have something to say at this stage and I will tie it
30 in later with the question of accident prevention. I

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1 thought we had some contribution to make to this point,
2 although it will be brief.

3 This will be found at page 28 of the
4 brief in paragraph 2.

5 The Workmen's Compensation Act in Section
6 86(6) provides for a merit system whereby the Board may
7 reduce the amount of any contribution to the Accident
8 Fund for which an employer is liable if such employer
9 is taking accident prevention precautions and has a good
10 accident record. Similarly, Section 99(3) provides for
11 the adoption of a system of merit rating. However, we
12 would submit that the present use of such systems provides
13 insufficient incentive for employers to spend the necessary
14 funds for safer working conditions. The biggest difficulty
15 with the present system is that it is not compulsory,
16 and is left to the discretion of the Board. A good
17 accident record in one year is no guarantee that an
18 employer's contribution to the Accident Fund will be
19 reduced in the next year.

20 We would recommend that serious consider-
21 ation be given to adopting an incentive payment plan
22 whereby an employer's contribution would be automatically
23 reduced if a favourable accident record were established
24 in the preceding year.

25 THE COMMISSIONER: You were not here
26 this morning, Mr. Koskie?

27 MR. KOSKIE: No, I am sorry, I was down
28 at the Workmen's Compensation.

29 THE COMMISSIONER: You might be aware of
30 all we have heard from these various representatives of



1 industry complaining bitterly about the double assessment
2 whenever an accident rate is high. Do you know about
3 that?

4 MR. KOSKIE: Yes, I am aware of that.

5 THE COMMISSIONER: Well, some of the
6 gentlemen here this morning are some of the people who
7 have suffered by it and it does appear to have a remedial
8 effect. They do cut their accident rate down when they
9 are exposed to that. The other thing you mentioned,
10 the incentive plan, I don't know whether you referred
11 to it or not but somebody did and that is the incentive
12 plan in Alberta. I have not seen the details of that
13 plan and I don't know what they are. I would like to
14 know.

15 MR. KOSKIE: Mr. Commissioner, as you
16 recall, the Canadian Association of Professional Safety
17 Men submitted a brief to you and they referred to it.
18 I have a copy of the brief and, as your Lordship knows,
19 I had assisted that Association in the preparation of
20 the brief. Our firm did write to the Workmen's Com-
21 pensation Board in Alberta where they do have some sort
22 of an incentive system there, and we recently received
23 a reply from the Board which explains the two systems
24 which are presently in existence.

25 THE COMMISSIONER: That I will be glad
26 to see because we have been trying to get it without
27 success.

28 MR. KOSKIE: I thought, Mr. Commissioner,
29 that the Safety Men Association themselves were going
30 to investigate that further, and when it turned out they



1 had drawn the brief, we didn't have much time but we
2 thought it would be of some assistance to you and, thus
3 far, we have only been able to obtain this letter which
4 I will file with you. I think, perhaps, we may do some
5 further investigation into it ourselves.

6 THE COMMISSIONER: I think we have got
7 all of the relevant statutes down here. All we want
8 is the information which is perhaps contained in this
9 letter.

10 MR. KOSKIE: I hope it is, and I file
11 a copy with you now, Mr. Commissioner. It is a copy
12 of a letter from the Workmen's Compensation Board in
13 the Province of Alberta and it is dated September 26th,
14 1966 addressed to the law firm of Robins and Robins.
15 Perhaps, Mr. Commissioner, I could read that letter to
16 you now.

17 THE COMMISSIONER: I would prefer to take
18 it when we reach this subject in about two weeks' time,
19 at which time we will cover this whole question of
20 safety provisions in the Workmen's Compensation Act.
21 I agree with you, it is properly brought for attention
22 now because it is a matter of cost, but with your
23 consent, I prefer to leave that. What do you think,
24 Mr. Estey?

25 MR. ESTEY: I think that is correct, sir.

26 THE COMMISSIONER: Otherwise, we will
27 be covering these things twice.

28 MR. ESTEY: I take it you will be back
29 when we come to item 4 on page 2 of the notice which
30 you have. Item 4 is the application of 86(6a) and the



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1 relating sections, but I would like a copy of that
2 Alberta letter if I could have it.

3 EXHIBIT NO. 17: Letter dated September 26th, 1966
4 addressed to Messrs. Robins & Robins.
5 from the Workmen's Compensation Board
6 of Alberta.

7 MR. KOSKIE: In that event, Mr. Commissioner,
8 I have no further submission to make on this particular
9 topic.

10 THE COMMISSIONER: Thank you. You can
11 have in mind the other profession that exists on capital
12 investments.

13 MR. KOSKIE: I will discuss that with
14 my clients.

15 MR. ESTEY: Mr. MacDonald?

16 MR. MacDONALD: Mr. Commissioner, today
17 I wish to deal with more of the topics on the agenda
18 which we left yesterday. We are giving you a broad
19 outline of some of our procedures and we would be very
20 happy to answer questions on a detailed basis as to
21 how various things are done.

22 Under the heading of Classification and
23 Rating: For rating purposes, the employers in the
24 Province of Ontario have been divided into 27 classes
25 of industry, and within those classes 107 (not 300 odd
26 as we heard this morning) rate number classifications
27 with individual assessment rates. A firm is classified
28 according to its various products. We do not rate on
29 occupation.

30 THE COMMISSIONER: What has happened to
Dominion Bridge, then, the sub-contractors? One man can



1 be building a brick wall and another day, and this rather
2 surprises me, that he would be allowed by labour to do
3 most jobs, that one day he would be on the wall and the
4 next day on a steel structure.

5 MR. MacDONALD: I think you have to under-
6 stand, sir, that many companies in this province are in
7 many businesses. Dominion Bridge is an excellent example
8 of a company that is in many businesses. It is, number
9 one, a manufacturer: It manufactures structural steel;
10 it also manufactures various other types of light metals.
11 In some cases, they choose to take a contract to do the
12 construction work, that is, the erection of their own
13 manufactured product in competition, of course, with
14 other companies who are just in the erecting or contract-
15 ing business. When they choose to enter these different
16 businesses which are under the Act as separate businesses,
17 then equity requires that we classify them in the same
18 manner as we would classify their competitor. It is a
19 fact, as Mr. Graydon indicated, that his company is
20 assessed at these different rates. A few years ago,
21 manufacturers were permitted by the regulations to erect
22 their own products at the manufacturer's rate. In the
23 post war construction period, this particular practice
24 resulted in the manufactured rates being very seriously
25 affected and those manufacturers, within those classifica-
26 tions who did not erect, were having their rates prejudiced
27 thereby. So, the regulations were changed and we no
28 longer permit a manufacturing company to become a con-
29 structor or contractor and still pay the manufacture rate.
30 Ironically, we are in the position that as a result of



1 the review of rates, rather than not having the review
2 of rates, we have this situation develop.

3 THE COMMISSIONER: On the other hand, I
4 suppose, the assessment structure has grown up over the
5 years, or is it under constant review?

6 MR. MacDONALD: It is under constant
7 review every year, sir. Within each rate number we
8 have coded all the different categories that there are
9 in each of these 107 rate numbers and from our computer
10 calculations and experience we know exactly what is
11 happening within each rate number.

12 THE COMMISSIONER: What is the position
13 with somebody who is not happy with the particular
14 classification and wants to complain about it? Perhaps
15 you told us the other day: Does he appeal through the
16 ordinary appeal procedure?

17 MR. MacDONALD: The first discussion
18 would be with the Assessment Department, and if he is
19 not satisfied with the decision they have made based on
20 their review of his business, then he may appeal in the
21 ordinary way through the various appeal structures that
22 we have.

23 THE COMMISSIONER: It has never been done,
24 though?

25 MR. MacDONALD: It is being done all the
26 time, sir.

27 THE COMMISSIONER: All these appeals are
28 going through the steps of the appeal procedure?

29 MR. MacDONALD: Yes, very much so. Sub-
30 section 86(6) ---



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1 THE COMMISSIONER: Because the other one
2 we had was from this firm which I think was in Kingston,
3 and they complain that they were being classified with
4 firms that were having to demolish high structures, such
5 as in Toronto, whereas there is nothing in Kingston more
6 than a couple of stories high that they had to demolish.

7 MR. MacDONALD: I saw the letter from A.
8 and T., which is a Hamilton firm. I have an explanation
9 of what we are doing in the wrecking industry later.

10 THE COMMISSIONER: Is it in here?

11 MR. MacDONALD: Yes, it is in here.

12 THE COMMISSIONER: Oh, all right.

13 MR. MacDONALD: The assessment rate is
14 applied to the total payroll, the same rate being charged
15 on the clerical payroll as is charged on the payroll for
16 the most hazardous occupation within the industry.

17 Rates are established on the basis of each
18 \$100 of payroll and are applied on all earnings up to
19 our maximum coverage of \$6,000 a year. Earnings above
20 that maximum are not assessed. Assessment rates in the
21 107 classifications vary from 10¢ for the Business of
22 Accountants, Architects, Draftsmen, and Engineers, up
23 to \$15.00 for the Wrecking of Buildings.

24 Average Rate of Assessment

25 The average rate of assessment charged in
26 each of the past five years is as follows: As you can
27 see, it is on a very flat plateau.

28 1961 - \$1.23 1962 - \$1.22 1963 - \$1.24 1964 - \$1.20

29 1965 - \$1.22
30



1 Annual Financial Statement For Rating

2 A complete financial statement is prepared
3 annually for each rate number classification, showing
4 total receipts, accident cost, interest, other expenses
5 such as Board administration, safety association expenses,
6 transfers to the common reserves, the balance forward
7 from prior years, and the balance at the end of the
8 current year. Provision is then made for outstanding
9 claims liability and outstanding assessments, resulting
10 in a balance.

11 I will have available, as an Exhibit, the
12 actual experience of a number of classifications.

13 THE COMMISSIONER: You have got here the
14 rate of assessment is established once a year, I take
15 it?

16 MR. MacDONALD: Yes, sir.

17 THE COMMISSIONER: How about the bills
18 for assessment, how often are they payable?

19 MR. MacDONALD: They are issued on an
20 annual basis and payable in instalments.

21 THE COMMISSIONER: That is what, payable
22 in instalments? That is what the man was saying this
23 morning. He says these certificates of good standing
24 you give indicate that someone was in good standing a
25 year ago?

26 MR. MacDONALD: I deal with certificates
27 in good standing in the collection machinery later. At
28 this stage, we are talking about a notice of assessment,
29 not a statement of standing.

30 A required contingency reserve is calculated

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1 with assistance by the Board's consulting actuary and
2 this contingency reserve is compared with the net balance
3 to determine the financial position within the rate
4 number. When a favourable balance occurs in a rate
5 number, the assessment rate is automatically reduced.
6 Conversely, if a deficiency exists, or the net balance
7 in the rate number drops below the minimum safe level,
8 the assessment rate is increased for the following year.

9 Annual Rate Adjustments

10 Assessment rates are considered annually
11 and when setting these rates we study the complete fin-
12 ancial experience of each rate number over the past three
13 years along with the balance forward from all prior years.

14 THE COMMISSIONER: Just a moment, the
15 contingency reserve, maybe that is what he was talking
16 about this morning when he was talking about the fund
17 being depleted.

18 MR. MacDONALD: Sir, he is completely
19 incorrect. There are no large deficiencies in any
20 section of the construction industry. There are slight
21 deficiencies which are subject to annual adjustment. I
22 checked this morning while he was talking, and the
23 majority of them are in the surplus position. Our policy
24 is to be conservative in rate adjustments, and it is not
25 necessary to recover a deficit or reduce a favourable
26 balance in one year. Our aim in setting assessment rates
27 is to keep each rate number in balance although it may
28 require several years to accomplish this.

29 Mr. Commissioner, do you wish me to
30 finish the presentation, or shall we stop at the end of



1 each subject?

2 MR. ESTEY: I think we should continue,
3 Mr. Commissioner. These inter-relate quite a bit and
4 it might shorten the proceedings.

5 MR. MacDONALD: There was a brief presented
6 to the Commission which might indicate that we were not
7 assessing or it was the belief of the employer concerned
8 that we were not assessing some wreckers in the wrecking
9 industry at the building wrecking rate and that it was
10 only part of their activity and complaining that it was
11 our policy to do so, rather than that they should be
12 left out of the wrecking category and so should their
13 accidents. The facts are that our present application
14 of building wreckers came about as a result of the
15 building association representing the building wreckers
16 and their submission was that all people who do building
17 wrecking as part of an overall contract --

18 THE COMMISSIONER: Just go slower. Your
19 present classifications --

20 MR. MacDONALD: I am really reading from
21 the brief in a general way.

22 THE COMMISSIONER: As a result of the
23 representation made, yes.

24 MR. MacDONALD:
25 Present Basis for Classification

26 As a result of representations made by
27 the Trade Associations representing the building wrecking
28 industry, all employers who do building wrecking as part
29 of an overall contract, or as their sole activity, are
30 classified in rate no. 859 where the industry description



1 is as follows:

2 "Business of Supplying Labour for Wrecking
3 of Buildings; Wrecking of Buildings by
4 a General Contractor or as a Business."

5 The various General Contractor Associa-
6 tions, including the group who were represented here this
7 morning, were consulted concerning this policy. They
8 supported the change of paying the building wrecking rate
9 on that portion of their overall contract. It is wrong
10 to assume that we are not assessing small contractors for
11 house wrecking when they engage in that activity as part
12 of their contract.

13 In order to plug another gap, supply of
14 labour firms are also assessed at the building wrecking
15 rate when they supply labour for this purpose.

16 As a result of this reclassification,
17 rather than the rate going up, as has been suggested, we
18 are confident that the rate will be gradually reduced on
19 the experience.

20 THE COMMISSIONER: How long has it been in
21 existence?

22 MR. MacDONALD: Since the first of last
23 year, sir.

24 THE COMMISSIONER: Since January 1st,
25 1965?

26 MR. MacDONALD: Yes, sir.

27 THE COMMISSIONER: Now, while we are on
28 that, Mr. Estey, is it A. and T. that was complaining?

29 MR. MacDONALD: We have attached the
30 letter to our brief. They made the point about monthly



1 payment of assessments which I deal with a little later
2 in assessments.

3 THE COMMISSIONER: Well, have you an
4 inspector on staff who can inspect and investigate all
5 cases and jobs and give them their attention?

6 MR. MacDONALD: We have many people who
7 do that, sir. We send out inspectors from our Assessment
8 Departments, the auditors are on occasion asked to do
9 this.

10 THE COMMISSIONER: Well, if these people
11 know of any such cases, you would be glad to investigate?

12 MR. MacDONALD: I would be delighted. In
13 fact, I have said many times to many complaints "If you
14 tell of one we would be glad to hear about it", and I
15 have yet to be told about any.

16 On the matter of how much assessments
17 are cancelled, I am dealing with/late^r, too.

18 Another interesting factor in this situa-
19 tion, sir, was that 90 percent of the accident cost in
20 the wrecking industry was found within ten of the larger
21 firms: It was not the smaller firms.

22 THE COMMISSIONER: What do you say - 90
23 percent of what?

24 MR. MacDONALD: 90 percent of the accidents
25 were in ten of the large firms which, again, refutes the
26 emphasis there.

27 THE COMMISSIONER: Well, on the contrary,
28 it might be referring to that but maybe they are talking
29 about another thing when they say that they have been
30 in the demolishing business for eight years and that



1 they have no accidents themselves and in that time the
2 rate has gone up from 4.25 percent to 15 percent and
3 there is no incentive for them to keep a good safety
4 record.

5 MR. MacDONALD: In history, sir, the
6 wrecking of buildings was at one time a part of the
7 general contracting trade. It has only been separately
8 rated for about five years now - perhaps only four years.
9 The 4.25 rate they refer to is the rate for general
10 construction, not the rate for wrecking or the actual
11 rate.

12 THE COMMISSIONER: Within the classifica-
13 tion itself, do you make any distinction between people
14 who would be required to take on a federal contract and
15 people who do work in smaller communities who also do
16 demolishing work?

17 MR. MacDONALD: Now actually, over the
18 years, our experience has been that the difference in
19 the height of a building as far as construction is con-
20 cerned is a rather meaningless factor. You can get that
21 experience with each group.

22 THE COMMISSIONER: And yet the largest
23 claims are coming in from those big companies that do
24 that type of work?

25 MR. MacDONALD: They were at that partic-
26 ular time, but there will be small companies that are
27 very seriously in the hole by themselves. My point is
28 that within each category of size, you can find both
29 good and bad experience.

30 I am sure I could go back to the files,



1 for instance and several firms like this one who would
2 have deficits, of the same size.

3 THE COMMISSIONER: Small firms of this
4 type?

5 MR. MacDONALD: Yes.

6 Payroll Filing and Assessing

7 Every employer under Schedule I of The
8 Ontario Workmen's Compensation Act is required to file
9 an annual Employer's Statement of Wages Paid showing
10 the following information:

- 11 1. The previous year's actual payroll.
- 12 2. The current year's estimated payroll.
- 13 3. Details of work let to contractors.
- 14 4. Description of the industry being
15 carried on.
- 16 5. The rate of personal covering, if
17 desired, by the employer, partners
18 or executive officers.

19 The Employer's Statement of Wages Paid forms are mailed
20 to all Schedule I employers during the last week of
21 December each year and must be returned to the Board by
22 the last day of February in the new year.

23 Date for Filing Payroll

24 Prior to 1956, the last payroll filing
25 date was January 20th. This did not allow employers
26 sufficient time to close their books, prepare Income Tax
27 T-4 slips, and complete the Statement of Wages Paid.
28 Representations were made by many employers to extend the
29 filing date to the last day of February to coincide with
30 the filing of T-4 slips with the Income Tax Department.

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1 This change was made in 1956 and our experience since
2 then indicates that over 90 percent of the employers now
3 file their payroll information on time.

4 Employers who do not submit a Statement
5 of Wages Paid by the end of March are mailed a reminder
6 letter and a duplicate set of forms. If the reminder
7 letter is ignored, an assessment is issued based on pay-
8 roll information submitted in prior years.

9 Assessing Procedure

10 After receiving the employers' payroll
11 statements, the assessing program commences March 1st,
12 with assessments being processed as quickly as possible.
13 At December 31, 1955, there were 64,046 firms covered
14 under Schedule I with 1955 assessment receipts totalling
15 \$33,722,543.50. At December 31, 1965, the number of
16 firms registered had increased to 104,532 and 1965
17 assessments totalled \$93,162,963.00.

18 Payment of Assessments

19 Prior to 1956, assessments of more than
20 \$50.00 were payable in two equal instalments as follows:

- 21 (a) The first payment to fall due within one
22 month from the date of posting of the
23 Notice of Assessment, and
- 24 (b) The second payment to fall due when the
25 Notice of Assessment was posted
- 26 (1) in January, within six months from
27 the date of posting;
- 28 (2) in February or March, within five
29 months from the date of posting;
- 30 (3) in April or May, within four months



1 from the date of posting;

2 (4) in June, within three months from the
3 date of posting, and

4 (5) in July, within two months from the
5 date of posting.

6 THE COMMISSIONER: You mean the date of
7 when you posting was/sent in the assessment to the company?

8 MR. MacDONALD: We start assessing on a
9 continual basis and if we happen to not have assessed
10 the firm until July, their first payment would be due
11 in a month.

12 THE COMMISSIONER: You sent that out the
13 first of the year but you gave them six months to pay,
14 is that it?

15 MR. MacDONALD: We did at that time, if
16 it was sent in January.

17 THE COMMISSIONER: And if it is sent in
18 January, you start cutting down. In fact, their six
19 months is out in July, that would give them a month?

20 MR. MacDONALD: It was normlly finished
21 in approximately August.

22 (c) From August 1st to the end of the year,
23 the assessment to be payable within one
24 month from the date of posting.

25 THE COMMISSIONER: You mean posting it
26 in the form of a letter?

27 MR. MacDONALD: Posting it in the form of
28 mail.

29 This was unsatisfactory from the employers'
30 standpoint, in that many firms overlooked the payment of

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1 the second instalment causing penalty charges to accrue.
2 The trade associations making representations for a later
3 payroll filing date indicated complete willingness to
4 accept a one payment assessment procedure with the
5 assessment to be due 60 days after issue, on the grounds
6 that this would represent approximately the time when
7 their second payment was due under the former system.

8 From January 1, 1956, assessments have
9 been payable in one payment. Where the Notice of
10 Assessment is issued on or before the 31st day of August,
11 payment is due within sixty days after the date of
12 posting, and where the assessment is issued on or after
13 the 1st day of September, within thirty days after the
14 date of posting.

15 The preparation of the Employer's Statement
16 of Wages Paid showing date, firm number, name and address,
17 rate number, description of industry, and assessment rate,
18 is a machine accounting operation, as is the calculation
19 and issuance of the Notices of Assessment, Reminder
20 Notices, Final Notices, and the application of assessment
21 receipts. During the past year, our total computer
22 usage was 2,494 hours, of which 518 hours, or 21 percent
23 of computer time was required for the processing of pay-
24 roll statements, assessments and receipts.

25 Short Date Investment Earnings

26 The majority of payments of assessment
27 are received in the period from May 1st to August 31st.
28 Funds which will not be required until the period from
29 September 1st of a year to April 30th of the following
30 year are invested in high grade short term instruments.
During 1965 the earnings on these investments amounted



1 to \$2,352,195.00, which thus reduces the cost signific-
2 antly to the employer.

3 THE COMMISSIONER: Your assessment, while
4 based upon the preceding year, is to take care of the
5 disbursements of the current year, is that right?

6 MR. MacDONALD: For the current year and
7 for the first four months of the following year which
8 are barren months.

9 THE COMMISSIONER: As a consequence, when
10 you get paid early in the year you have this money
11 available that is not going to be called upon until a
12 later time and you invest it to advantage?

13 MR. MacDONALD: That is right, sir. We
14 felt this should be clearly indicated. If the factors
15 of multiple payment were changed, this situation would
16 be affected.

17 The introduction of a multiple payment
18 system of assessment would remove these investment
19 earnings and thereby increase costs.

20 THE COMMISSIONER: If they are paying
21 month by month you would not have the advantage of that?

22 MR. MacDONALD: That is right, yes.

23 THE COMMISSIONER: But industry would,
24 the employer would?

25 MR. MacDONALD: That is true.

26 THE COMMISSIONER: It might not be very
27 different in the end, except that it would not look as
28 good in the assessment from your standpoint?

29 MR. MacDONALD: To the extent that they
30 might invest themselves, they perhaps could use it but,



1 certainly, there would be the result and affect of us
2 having to assess for this much more money to cover our
3 total activities.

4 THE COMMISSIONER: It would look nice
5 from your standpoint, the assessments will appear to be
6 higher?

7 MR. MacDONALD: That is right.

8 MR. ESTEY: Could you not go to the
9 opposite system to the system you are talking about.
10 Didn't, four years ago, the Department of National
11 Revenue say "We will pay now on a one-time basis" to get
12 the opposite result that you want.

13 THE COMMISSIONER: What they are doing
14 here is looking forward to a year ahead. The National
15 Revenue Department, up until they went on that, were
16 always a year behind.

17 MR. ESTEY: But they are both now collect-
18 ing in the current year but ahead of the end of the
19 year?

20 MR. MacDONALD: I am, in effect, saying,
21 Mr. Estey, that we are better off and are keeping the
22 cost down by having the funds for a full half year than
23 they would be having them one-twelfth at a time during
24 the whole year.

25 MR. ESTEY: I don't understand it. If
26 you get it in January instead of December --

27 MR. MacDONALD: We would get January in
28 January and February in February. There would be no
29 option at all.

30 MR. ESTEY: You would get January and



1 February in February instead of September and you get
2 February's in February instead of September, etcetera,
3 down to August and then you get only three months
4 behind September. That is why I don't understand you.

5 MR. MacDONALD: We only start receiving
6 assessments in May, not September.

7 MR. ESTEY: Under this new system, you
8 get it in May?

9 MR. MacDONALD: We start getting it in
10 May.

11 MR. ESTEY: Depending on how fast you
12 get those notices out?

13 MR. MacDONALD: Yes.

14 MR. ESTEY: But you never get any out in
15 January.

16 MR. MacDONALD: Never. We can't get
17 anything out until March.

18 MR. ESTEY: You are the actuary and I
19 am not, but it seems to me simple arithmetic that you
20 are not going to get as much money that way as you would
21 if you started in January. Isn't that the explanation
22 given in the House of Commons where the Department of
23 National Revenue go into the January estimate basis?

24 MR. MacDONALD: Had they been able to
25 get a pre-payment of a large part of that in May of
26 all the income tax for the previous year they would have
27 been better off. I think they made a significant
28 improvement for them.

29 THE COMMISSIONER: Instead of that, they
30 had been giving you post payment in the following April,

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1 April following the end of the year?

2 MR. MacDONALD: Yes.

3 MR. ESTEY: The corporation never got
4 that. You and I got that break, but the corporation
5 never did and they simply shunted the corporation up
6 into January instead of June and the explanation, as I
7 remember it, was "If we have the money one-sixth at a
8 time for six months, it is better than having it all
9 in the centre of the six months." That is why I rose
10 to see if you could explain that.

11 MR. MacDONALD: Well, certainly, our
12 advice is that we are better off this way. Let us be
13 clear. I am not objecting to there being such a system.
14 I am just pointing out what the effect would be. I
15 think we are more concerned, really, about the next
16 factor I am going to talk about than we are about the
17 matter of investment earnings. I have to record that
18 this would be a loss to the fund and, therefore, would
19 have to be picked up in some way or other.

20 It would be necessary, too, of course,
21 to have additional staff in the accounting section for
22 the manual activities involved, such as filing and the
23 performance of cashier functions. More significant,
24 however, would be the increased time required on our
25 computer to record these transactions.

26 Plans for Total Computer System

27 Planning is in progress for new systems
28 to be used with the large scale computers which will be
29 installed at the Board's offices in 1969.

30 These new computers, through massive



1 random access storage, provide opportunities for con-
2 solidating existing systems and developing new manage-
3 ment information systems.

4 The new systems will integrate claims
5 record keeping, payment and statistical operations. This
6 will permit the analysis of claims experience to forecast
7 developing trends concerning accident frequency and cost,
8 and the need for treatment facilities. This will be of
9 great assistance in planning industrial safety programs
10 and in the measurement of their effectiveness.

11 Even with high speed processing in billionths
12 of seconds and very compact scheduling, to provide the
13 necessary time for this mammoth project, it is necessary
14 to review all existing computer systems, such as assess-
15 ing, receipting, and updating employer records. These
16 systems will be integrated and master files created on a
17 data cell unit which can contain four hundred million
18 characters of information. With the new equipment,
19 many computer operations will be ongoing simultaneously.

20 The most time consuming aspect of all
21 systems operations is the preparation of data for input
22 to the computer and ways will be sought to reduce the
23 volume of transactions. It will not be practical to
24 expand existing assessing and collection routines on
25 a greater frequency basis than at present for these
26 reasons.

27 We anticipate that the future systems
28 will perform much of the repetitive detail and record
29 keeping work inherent in our type of business and at
30 the same time provide an immediate reflection of
accident risk experience in industry on which management



1 decisions for corrective action can be made.

2 THE COMMISSIONER: Perhaps you can tell
3 us in the past year, it might not be fair to ask you to
4 do it offhand, but what percentage of the assessed
5 amount or the amount that you would have assessed have
6 you failed to collect because companies have gone out of
7 business?

8 MR. MacDONALD: The next presentation
9 includes that information.

10 THE COMMISSIONER: All right.

11 MR. MacDONALD: Under the heading of
12 Collection Procedure and Notices.

13 The employer is acquainted with his
14 financial obligation to the Board by means of an Assess-
15 ment Notice which is issued annually to all active firms
16 and falls due for payment two months after the date of
17 issue. Should the employer fail to make payment within
18 ten days after the due date, he receives a "Reminder
19 Notice" which is a printed form and serves to remind
20 the recipient of default and also points out the fact
21 that interest charges at 5 percent have been added to
22 the account.

23 THE COMMISSIONER: Let us go back here.
24 You say within three months. What was this other thing
25 you gave us?

26 MR. MacDONALD: That was the system prior
27 to 1956.

28 THE COMMISSIONER: That is not your present
29 system?

30 MR. MacDONALD: That is not our present

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1 system. In the event that payment of assessment is delayed,
2 interest
3 will increase should default continue. In the event that
4 payment of assessment is not made within thirty days after
5 the due date, a "Final Notice" is issued which is similar
6 to the reminder notice but carries a stronger message.

7 Procedure on Default

8 Should default continue for a period of
9 fifty days from the due date, the Collection Officer is
10 notified and the account at this stage receives the
11 personal attention of one of the collection staff.
12 Several avenues of procedure are available to us.
13 Personal contact is favoured, and if at all possible the
14 employer will be approached by telephone or by one of the
15 Board's representatives at his place of business. It
16 has been found that a personal call very often results
17 in a successful collection and may also serve to clear up
18 any misunderstandings or problems which the employer
19 may have concerning the method of assessment.

20 Filing of Collection Writs

21 If preliminary collection procedures fail
22 to bring results, and it is felt that the delinquent is
23 in a position to pay, then the several remedies provided
24 by the Workmen's Compensation Act may be employed.
25 Section 110 of the Act provides for a form or judgment
26 in the Division or County Courts, and Section 111 allows
27 the Board's claim to be entered on the municipal tax
28 roll to be collected in the same manner as taxes.

29 Responsibility of Principal

30 Section 10 of the Act places an obligation on the owner or prime contractor to ensure that

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1 his contractor pays Workmen's Compensation assessment.
2 This section is very helpful in collecting moneys where the
3 construction trades or woods operations are concerned.

4 A great deal of money is collected through Section 10
5 without actually having to enforce it, as owners or prime
6 contractors will refuse to pay the final holdback until
7 such time as the contractor can produce proof that he
8 is in good standing on the books of the Board.

9 Collection Experience

10 Due to the fact that the Board must
11 accept bad financial risks as well as good, we encounter
12 some loss of assessment due to business failures. During
13 the year 1965, it was found necessary to write off an
14 amount of \$654,284.61 as loss of assessment.

15 Assessment charges in the year 1965 amounted
16 to \$92,253,391.56, and on adding the unpaid charges from
17 prior years, we arrive at a total amount to be collected
18 of \$96,622,871.46. Our write-offs then during 1965
19 represent less than one per cent. of the total charges
20 for that year. This percentage will be reduced con-
21 siderably as moneys are eventually received from Trustees
22 in Bankruptcy and the Courts.

23 I would like to emphasize our basic Board
24 philosophy on collection.

25 Board's Philosophy of Collection

26 It is the aim of the Collection Officer
27 to collect the maximum amount of assessment keeping in
28 mind that our efforts in this direction should not
29 cause the employer undue financial distress. Reasonable
30 arrangements for payment are always acceptable and are

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1 continued as long as the employer shows good faith.

2 THE COMMISSIONER: Well, it is a low per-
3 centage, less than 1 percent, but it is a high amount
4 of money nevertheless, over half a million dollars. Do
5 you state that it is impossible under this new system
6 that has been set up to have collections on any other
7 basis than that in which you set it up, which you say
8 is one year?

9 MR. MacDONALD: In the first place, I
10 don't believe that the majority of employers really
11 want a multiple payment basis of assessment. I think
12 there are some sections of industry which would like
13 it, notably the construction section. I am saying that
14 we would be not actually anxious to introduce a multiple
15 type of assessment, because it is going to tie up our
16 procedure in an area where we would like to use them
17 in other ways. I think I did say earlier that we are
18 not going to oppose, if you will, a change in this
19 thing, but we don't think it is really as necessary as
20 perhaps has been suggested. I don't think the evidence
21 in terms of collection indicates that it is a serious
22 problem. If an employer is having any sort of difficulty
23 in meeting his payments, we are quite sympathetic to his
24 particular problem.

25 For instance, this year, the trucking
26 people approached us because of the problems they were
27 having financially due to the strike and we allowed them
28 to have an extension of the payment time for assessment.
29 So, I think we can deal with an individual case of
30 financial hardship within the present system. On the



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1 other side of the picture, administratively, to change
2 and produce some additional cost.

3 I have one final item here which does
4 not actually relate to these particular subjects, but
5 it was a matter I was asked to report on earlier.

6 THE COMMISSIONER: Before you leave that
7 last one, I am sure you have considered it, but is there
8 any other way that could be adapted to try and prevent
9 these losses?

10 MR. MacDONALD: The matter of loss of
11 assessments, you mean, sir?

12 THE COMMISSIONER: Yes.

13 MR. MacDONALD: We have changed our pro-
14 cedures in recent years to emphasize this matter of
15 personal contact, and I think that particular procedure
16 has been the most productive in producing our experience
17 to its present level. We don't think we should be
18 punitive to the point of really forcing employers into
19 bankruptcy as we could be doing in certain situations.
20 So, we are emphasizing that as long as he is making some
21 sort of a reasonable effort to meet his obligations
22 which will involve, in his case, instalment payment,
23 we would go along with that.

24 MR. ESTEY: Mr. MacDonald, when you send
25 out the assessment notice, is that based on last year's
26 payroll or this year's estimate?

27 MR. MacDONALD: Based on a composition of
28 the two, Mr. Estey. Last year he will have given us a
29 provisional estimate and he will now give us his actual
30 payroll which we have to adjust, and he gives us a new



1 provisional estimate, so we will assess on the combination
2 of the difference between last year's provisional and
3 actual at last year's rate plus an assessment on this
4 year's provisional payroll at this year's rate.

5 MR. ESTEY: So, he may have a charge or
6 credit for last year, depending on how the estimate
7 turned out in actual, then he will get another part of
8 the assessment attributed to this current year?

9 MR. MacDONALD: On the average employer's
10 estimate, the payroll is about 85 percent of actual, so
11 really he is getting a 15 percent adjustment from last
12 year.

13 MR. ESTEY: I have two questions arising
14 out of that: One is, why could you not do that in
15 November, December, for the following year, and then
16 have him pay one-twelfth of that all the way through
17 the year, or one-sixth of it?

18 MR. MacDONALD: I can think of a number
19 of ways we could set this up, but our present system
20 has really been established in liaison with employers,
21 and I don't really think the majority of employers want
22 a change. We are satisfied with it from our point of
23 view.

24 MR. ESTEY: I understand that. I wasn't
25 really looking after the interests of the employer when
26 I asked the question. I was trying to find out why we
27 could not bill in advance so that you don't lose on your
28 investment income -- in fact, you may gain -- but you
29 would eliminate largely the problem of firms leaving
30 the business for any reason, including bankruptcy -- but



1 any reason at all -- and then you would not have to write
2 off half a million dollars a year. You would have to
3 write off something, but not that much. Then, the second
4 reason I wanted to ask you the question, so that you will
5 know I am not trying to get at or defend an employer, is
6 that if I am a sub-contractor and I have to get a
7 certificate of clearance from you to get my holdback
8 after the mechanics lien period has expired, and I have
9 trouble getting that from the Board and I should have
10 trouble getting it from the Board when the Board does
11 not know my estimate for the year which we are talking,
12 the current year. Now, you could eliminate all that
13 if you went through the estimate the year before, that
14 is, next month for next year, the month of November,
15 1966 for the year 1967, and then I ask for a certificate
16 of clearance in February and you know exactly what my
17 position is in February from my estimate and from my
18 January payment, and if I have not made the January pay-
19 ment, you don't give me the clearance. Do you see what
20 I mean? That would be an advantage, wouldn't it?

21 MR. MacDONALD: I would agree in the area
22 of clearances this could be an advantage. I would like
23 to talk a little bit about clearances because of the
24 points raised this morning. It was suggested, I believe,
25 in the situation described that sometime after a clearance
26 letter had been given we assessed the prime contractor
27 concerned for a period before the date of that letter.
28 I would seriously question that could possibly have
29 happened. We will give any employer, that is, the prime
30 contractor or the sub-contractor a clearance letter any

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1 time he asks for it, and if we have given such a letter
2 in no situation would we try to assess him prior to the
3 date of that letter. I am sure / ^{what} must have happened in
4 the case that was being discussed, is that they had a
5 clearance, perhaps six months ago, and came along and
6 made a settlement with the sub-contractor subsequent to
7 the date of that letter. It is not necessary that we
8 have actually collected the assessment for that prior
9 period for us to issue the clearance. If the sub-
10 contractor has a good record with us, we will issue the
11 clearance even though he has not paid the assessment. We
12 certainly would not charge the principal if subsequently
13 to the sub-contractor was unable to pay. We would never
14 do that.

15 THE COMMISSIONER: What would happen if
16 he did not have a good record?

17 MR. MacDONALD: If he does not have a
18 good record and his assessment for the current year is
19 not paid, normally what we do is write to him and say
20 that we have been requested to give a letter of good
21 standing covering his account and in view of the fact
22 that he has a substantial assessment owing for the
23 previous period ---

24 THE COMMISSIONER: That is fine, but
25 talking a moment ago, you said even if he was not in
26 arrears, you were prepared to give him a clearance on
27 his record?

28 MR. MacDONALD: That is right.

29 THE COMMISSIONER: Now we are talking
30 about another man who wasn't in arrears but who had a

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1 bad record.

2 MR. MacDONALD: What do you mean by a bad
3 record?

4 THE COMMISSIONER: I don't know. You are
5 the one who used the expression.

6 MR. MacDONALD: A bad record would have
7 to be a bad payment record. It would not be a bad
8 accident past record. He would have to have evidence
9 with us of not paying his assessment promptly or having
10 been a collection problem in the past. If we encountered
11 such an individual and somebody wanted a clearance letter
12 on him and he owed a large assessment ---

13 THE COMMISSIONER: I know if he had a
14 large assessment you won't give him a clearance, but
15 if he did not owe any assessment but he had a bad record
16 in previous years.

17 MR. MacDONALD: If it comes at the
18 early part of a year before the assessments have been
19 issued, we would give him a clearance if his estimate
20 was paid for the previous year.

21 MR. ESTEY: That is the question I want
22 to ask: Supposing the information return has come in
23 from the sub-contractor prior to that 1st of March dead-
24 line that you have now, because the machinery cannot
25 spin that fast, issued his notice of assessment by,
26 let us say, the 1st of June and on the 25th of May he
27 writes to you and says "I need a certificate of clearance
28 I can get my advance from the prime contractor", what do
29 you do?

30 MR. MacDONALD: The collection officer

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1 has a problem deciding what he should do and in the
2 majority of cases he would give the clearance.

3 MR. ESTEY: But, supposing the man has
4 given an estimate in February of his 1966 payroll and
5 the estimate is lower than his actual 1965 payroll and
6 you have not issued an assessment because of the cir-
7 cumstance I just explained, before the assessment is
8 made, you get this request for a clearance: What
9 does the Board do then?

10 MR. MacDONALD: If I followed you
11 correctly, you said his actual was less than his previous
12 year and actually we owe him money at that point.

13 MR. ESTEY: No, he owes you money. He
14 underestimated in 1965 and you now know that by February,
15 1966 when he files his return showing his actual, and
16 then he estimates his 1966 payroll and you feel again
17 that he is a creature of habit and he underestimated
18 again, but you have not issued the assessment prior to
19 the request for the clearance: What does the Board do?

20 MR. MacDONALD: We, again, look at his
21 payment record with us. If it has been good, we are
22 not going to penalize him for underestimating in that
23 one instance.

24 MR. ESTEY: The Commissioner has asked
25 you the key question, if I may say so: If his estimating
26 record is bad, but he doesn't owe you a nickel, do you
27 give him a clearance or not?

28 MR. MacDONALD: Estimated records are
29 not permitted to continue to be there, if an employer
30 in one year or two years underestimates, but if we find

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1 an employer does this consistently, then when we assess
2 him we jack up his estimate and tell him why we have
3 done it.

4 MR. ESTEY: I can understand that, but
5 before you have mailed it out, jacked up or not, I
6 understand there is difficulty in the sub-contracting
7 industry in getting that clearance because he is in the
8 hiatus between the filing of a return and the issuance
9 of the assessment.

10 MR. MacDONALD: I don't accept the fact
11 that this is a consistent problem. I agree it happens
12 in individual cases where there is a good reason for it
13 to happen.

14 MR. ESTEY: It is not a permanent
15 difficulty?

16 MR. MacDONALD: Definitely not. I don't
17 see large complaints about this.

18 THE COMMISSIONER: Generally speaking,
19 whenever you are asked for the clearance, you give it?

20 MR. MacDONALD: In 95 percent or even
21 higher than that, Mr. Commissioner.

22 Under the heading, Administration Costs
23 of the Board, this shows the amount going to the
24 injured workman or on his behalf, it shows it has gone
25 up from 89.3 cents to 89.9 cents. Accident Prevention
26 has increased from 2.9 cents to 3.6 cents and Administra-
27 tion has been reduced from 7.8 cents to 6.5 cents.

28 Representations have been made suggesting
29 that the reduction in the waiting period did not increase
30 administration costs and providing as evidence, the



1 breakdown of the assessment dollar as indicated by the
2 previous table.

3 Many factors are involved in the relation-
4 ship between administration costs and the total dollars
5 of disbursement for compensation and medical aid. The
6 spiral in wages each year increases the amount of com-
7 pensation for a given accident. Individual benefits
8 have been increased. Medical costs are also increasing
9 as the Doctors' Fee Schedules and per diem hospital rates
10 increase.

11 On the other side of the calculation the
12 Systems and Procedures Division of the Board and its
13 operating departments have been constantly developing
14 improvements in our routine which reduce our operating
15 expenses. Greater use of computer facilities, as well
16 as the many new developments in other office equipment
17 and systems have had the effect during this period of
18 reducing the unit cost for our various activities.

19 The actual facts of the situation, there-
20 fore, are that despite the increased requirements for
21 enquiry as the waiting period was reduced and other
22 benefits changed, we have been able to reduce the over-
23 all costs of administration in relation to benefits awarded.

24 THE COMMISSIONER: Suppose this administra-
25 tive cost were to depend, to some extent, on how many
26 claims you were processing: For instance, two years
27 ago, you might have been processing twenty thousand
28 claims, but the total payroll for that year would not
29 have been over \$80,000,000., but due to the increase
30 in wages, supposing there had been no increase in pay-



1 roll, they jumped up this year to \$100,000,000. Are you
2 processing the same number of claims with the same
3 number of staff with the payroll so much higher that
4 your administration costs seem to be left with less
5 when, in actual fact, they may be substantially more?

6 MR. MacDONALD: You could have that situa-
7 tion. I don't think that is what has happened. I am
8 pointing out that the unit cost of production has been
9 reduced.

10 THE COMMISSIONER: The other fact you
11 mention is the payroll size, isn't it?

12 MR. MacDONALD: I am pointing out that
13 we are taking a total dollar volume which is being
14 affected by wages.

15 THE COMMISSIONER: On a dollar volume, it
16 is obviously true. I just wonder. The figures may be
17 deceptive on volume.

18 MR. MacDONALD: Speaking not on the claims
19 side of the board at the moment which we are in the
20 process of working on now, but for the financial side,
21 with the introduction of computer facilities for some
22 four or five years, we were actually able to reduce our
23 staff almost 1,800 people, not that the people were fired,
24 but on attrition basis we just did not replace any people.
25 This type of thing can, in fact, reduce the actual basis.

26 THE COMMISSIONER: You are able now to
27 handle a substantially increased volume without varying
28 a great deal of your staff?

29 MR. MacDONALD: We have in this particular
30 period almost doubled our volume and had very little staff.



1 MR. ESTEY: What are the actual dollar
2 figures for this administration item under, say, 1963,
3 1964, 1965, instead of the percentage? Would you have
4 that available?

5 MR. MacDONALD: I could get it for you,
6 I have not got that with me. Inevitably it is going to
7 be a figure that is up, because we have exactly the same
8 staff and the same type of wage spiral happens to our
9 staff as any staff.

10 THE COMMISSIONER: That is what I was
11 wondering. Did you say you doubled the work in the
12 last five years that you are handling?

13 MR. MacDONALD: In certain areas, yes,
14 sir.

15 THE COMMISSIONER: Because the compensa-
16 tion payments have gone up?

17 MR. MacDONALD: They have almost doubled
18 in the last five years.

19 MR. ESTEY: Obviously, it is a favourable
20 method of reporting to give administration costs in
21 terms of percentage to the total payout, isn't it,
22 because you would get the maximum result if you had no
23 investigation at all and the computer paid everybody,
24 that would give you the lowest cost?

25 MR. MacDONALD: Yes.

26 MR. ESTEY: So expressed/ ⁱⁿ terms of per-
27 centage of the payout administration costs can really
28 be analyzed so that is why I wondered if you could give
29 us the actual payouts and the actual administration costs
30 and the actual number of claims for, say, the last three



1 calendar years.

2 MR. MacDONALD: Yes, I can get that for
3 you, but I think you have to be careful how you interpret
4 it. This is the traditional method used by all organiza-
5 tions to compare with each other, if you will.

6 MR. ESTEY: I am sure it has its place,
7 but I am just suggesting that perhaps here, we might
8 like to see the actual figures.

9 MR. MacDONALD: I would be very happy
10 to get that for you.

11 THE COMMISSIONER: I am just trying to
12 recall what it was that called for this table. What
13 comment was it?

14 MR. MacDONALD: I believe one of the
15 union briefs quoted or reported, said that the waiting
16 period could not have increased our administration costs
17 because they had come down, and I was just pointing
18 out that that was not quite realistic to say that.

19 THE COMMISSIONER: Because there were
20 other economies effected in that period?

21 MR. MacDONALD: There are other factors
22 in the situation which have a great bearing on it.

23 MR. ESTEY: Plus the fact that they are
24 again referring to the percentage of administration
25 costs as a whole?

26 MR. MacDONALD: Yes.

27 MR. ESTEY: That is issue I was taking up
28 a moment ago.

29 MR. MacDONALD: I think, really, if you
30 are going to do what you want to do, you should look



1 actually at the number of staff involved and the
2 administration. This, perhaps, will give you the two
3 factors.

4 MR. ESTEY: I was also curious as to how
5 much the computer cost is. If you laid off 45 --

6 MR. MacDONALD: Please correct that,
7 because I didn't lay off anybody.

8 MR. ESTEY: If attrition attended to it
9 for you and you replaced them all with a great big
10 computer, you might not gain very much. Apparently you
11 do, though.

12 MR. MacDONALD: Oh, you do, definitely.

13 MR. ESTEY: Or you wouldn't have it?

14 MR. MacDONALD: That is right.

15 THE COMMISSIONER: Your opinion is that
16 the reduction of the waiting period did affect admini-
17 stration costs?

18 MR. MacDONALD: It had already meant
19 that we had to do more things. The fact that we found
20 a better way of doing it happened.

21 MR. ESTEY: That is, if everything had
22 remained constant and the world showed no progress and
23 you simply cut the waiting period, what would have
24 happened to your administrative cost?

25 MR. MacDONALD: I don't know what would
26 have happened but we obviously would have had to make
27 more enquiries.

28 MR. ESTEY: It would have gone up?

29 MR. MacDONALD: Yes.

30 MR. ESTEY: In other words, the contrary

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1 is true, is it not, that expressed in terms of percentage
2 of your total payouts that your administration costs
3 will go down if you eliminate the waiting period and
4 if you eliminate any investigation?

5 MR. MacDONALD: Another way of putting
6 that is that if we had a depression our administration
7 costs would go up.

8 MR. ESTEY: Percentagewise?

9 MR. MacDONALD: Percentagewise, that is
10 right.

11 MR. GUTHRIE: Mr. MacDonald, can I go
12 back to a couple of things which you said about it this
13 morning. The classification of ratings, Mr. MacDonald,
14 you mentioned that division into rates and classes is
15 under continual review. Has there been any complete or
16 major review in recent years of the whole thing, or is
17 it just done bit by bit as occasion demands?

18 MR. MacDONALD: As I explained earlier,
19 Mr. Guthrie, we do have a breakdown available to us
20 annually within the actual sectors of that rate number
21 and we do know whether or not one of those rate sectors
22 is having an experience which should cause us to
23 classify them differently and each year for many years
24 there have been modifications made because of that type
25 of review. As far as saying "In the year 1962 we will
26 review everything," it is not really done on that basis
27 but it is a question of knowing from the material
28 available to us what areas should be changed.

29 MR. GUTHRIE: Your statistics will
30 indicate where a review was called for and a review

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1 of everything might be wasting time.

2 MR. MacDONALD: Yes, we have said, I
3 suppose we could say this that a number of years ago
4 we said to our consulting actuary, in fact, this is
5 a study in construction to him, "If you have any
6 recommendations or anything you feel should be changed,
7 always bring it to our attention."

8 MR. GUTHRIE: And in the next sentence
9 in that same section, you say, "The claim was classified
10 according to its credits." And going on, "Rather than
11 on occupation." In terms of the basic industry, such
12 as construction, how can you say that you classify it
13 on product when we heard this morning these erectors
14 and tearing down firms were assessed in different
15 classes. That is not a product basis, that is really
16 work activity, is it not?

17 MR. MacDONALD: That is really an over-
18 simplification we have in our system. If they are
19 not manufacturing a product they are performing a service
20 and to the extent they perform different services we
21 have to classify them differently for each of those
22 things.

23 MR. GUTHRIE: The reason being because
24 of the accident experience?

25 MR. MacDONALD: There is a very different
26 experience for the erection of steel than there is for
27 the erection of a bridge, for instance.

28 MR. GUTHRIE: How, in practice, did this
29 division of the payroll work in the employer's case,
30 how does he break down his payroll to show the different

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1 bases of activity his men are involved in?

2 MR. MacDONALD: We say to an employer
3 that if he is in these different businesses, clearly
4 in those businesses, that he may keep a segregation of
5 payroll in those different categories in their rates
6 accordingly. If he chooses not to do that then he is
7 assessed at the highest rate for the various activities
8 he is engaging in. There are very few employers who
9 would not find a way of keeping a segregation of the
10 payroll based on that.

11 MR. GUTHRIE: But, is there any check
12 made on whether the segregation is accurate. Can you
13 add to that in any way?

14 MR. MacDONALD: Oh yes, we have about
15 55 auditors on the road at all times auditing just this
16 type of situation.

17 THE COMMISSIONER: Yes, but they would
18 not relay what the employee's name was entered on the
19 payroll. A firm that had a number of things would move
20 him around. They said they did it about once a week,
21 put him on one list or the other.

22 MR. MacDONALD: Well, I agree that there
23 can be situations where perhaps falsification of
24 records does take place, but we don't encounter this
25 problem very often.

26 THE COMMISSIONER: What lay behind this
27 complaint this morning? Would there be anything more
28 on this business of the difficulty of having to put
29 people in different payroll classifications?

30 MR. MacDONALD: I know this has been a

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1 matter of some discussion with the Board and these
2 gentlemen. The basic objection is that, as manufacturers,
3 they once enjoyed the privilege of being also in the
4 construction business and not paying the construction
5 rate and when they were required to pay the rate for
6 the business in which they were engaging, it was more
7 costly and naturally they objected.

8 THE COMMISSIONER: Well, it just happens
9 that that man who gave evidence was from Dominion Bridge,
10 but the other people were talking of this. For instance,
11 Mr. Nicholls, he would not be in the manufacturing
12 business, would he? He would be in the construction
13 business.

14 MR. MacDONALD: Yes. Frankly, sir, as
15 far as this type of problem being a matter of complaint
16 to the Board is concerned, I can't recall very many
17 cases. This is one of a very few matters of discussion
18 in recent years.

19 THE COMMISSIONER: So it might arise, in
20 fact, that one of the companies who were sponsoring it
21 were in the manufacturing business as well as the other
22 activity.

23 MR. MacDONALD: That is my opinion, sir,
24 MR. GUTHRIE:
25 You mentioned the financial statement for each
26 rate numbered classification part way down that page.
27 Is that furnished to each member of the group, or is it
28 just available on request?

29 MR. MacDONALD: If you look in the annual
30 report, Mr. Guthrie, you will see it is in that report.

MR. GUTHRIE: Which annual report do you



1 mean?

2 MR. MacDONALD: That is the annual
3 financial report.

4 MR. GUTHRIE: Page 16. Oh, I see. When
5 you spoke of a financial statement, I was thinking of
6 almost a balance sheet. This is the statement you refer
7 to in this part of your brief?

8 MR. MacDONALD: Yes.

9 MR. GUTHRIE: I don't think we have ever
10 had this report filed as an Exhibit at this hearing.
11 I wonder if you would care to do that.

12 MR. MacDONALD: Yes. Mr. Commissioner,
13 file
14 I will/as an exhibit of the rating procedures by rate
15 number, the annual financial report of the Board, noting
16 that on page 16 of that report the complete statement
17 for rating of every rate number is detailed.

18 EXHIBIT NO. 18: Annual Report for 1965 of The
19 Workmen's Compensation Board.

20 THE COMMISSIONER: This may bring up
21 something, and maybe that is what Mr. Guthrie is trying
22 to find. There have been complaints by some, I think
23 maybe it was the railways, that the information given by
24 the Board in its annual statement or statistical state-
25 ment was not adequate.

26 MR. MacDONALD: It was the Canadian
27 Manufacturers' Association, sir, and this is, I think,
28 what they wanted. Up until this year, we only went as
29 far as net balance. We did not detail the contingency
30 reserves through to the end and, as a result of that

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1 comment, we did put it into this year's report which is
2 why I indicated yesterday that I would like to hear if
3 there was anything further.

4 THE COMMISSIONER: This has just come
5 out within the last very recent time.

6 MR. MacDONALD: It was tabled in the
7 legislature early in the year. It was out about a
8 month and a half ago, I believe, sir.

9 MR. GUTHRIE: I think when that brief
10 was presented, the C.M.A. did indicate that it had been
11 made up before this report was available, sir.

12 MR. MacDONALD: I spoke to the gentleman
13 afterwards and I think they are happy that this
14 additional information has been made available.

15 MR. ESTEY: Does the fourth column
16 equal the total interest revenue?

17 MR. MacDONALD: That is the total interest
18 that has been credited to the classes through the
19 current fund. There is also interest credited to the
20 pension fund on a separate statement.

21 MR. ESTEY: When you add the two together
22 you get the interest revenue?

23 MR. MacDONALD: Right.

24 MR. GUTHRIE: That is the figure that
25 you show in your next section for the short date
26 investment ratings, is it not?

27 MR. MacDONALD: No, short date investment
28 earnings is an itemization of that interest which was
29 earned and maturities which fell/between the period I
30 have described there, that is, May 1st to August 31st.



1 It is not in the annual report as an item.

2 MR. GUTHRIE: I don't understand that.

3 It is exactly the same figure. Thank you, Mr. MacDonald.

4 Coming to your payroll filing and assess-
5 ing, Mr. MacDonald, in the centre part where you say
6 that employers who do not submit a statement of wages
7 paid by the end of March are mailed a reminder letter
8 and if that is ignored then you issue an assessment based
9 on the prior year's information, do I take it that you
10 don't leave it at that? Is some inspection carried out
11 on that point?

12 MR. MacDONALD: Every employer in that
13 category is audited automatically.

14 MR. GUTHRIE: It is automatic?

15 MR. MacDONALD: Yes.

16 MR. GUTHRIE: On the next page on this
17 question of annual payment or more frequent payment,
18 you say about two-thirds of the way down "The trade
19 association making representations for a later payroll
20 filing date indicated complete willingness to accept a
21 one payment assessment procedure." Do you remember
22 offhand just what associations those would have been,
23 or what ones were not included in that?

24 MR. MacDONALD: Certainly, every trade
25 association that we had dealings with was consulted at
26 that time and I am quite certain I included the con-
27 struction associations.

28 MR. GUTHRIE: I am wondering what they
29 said at that particular time.

30 MR. MacDONALD: At that particular time

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1 this particular request for multiple payments was not
2 made an issue. They were so anxious, I assume, to get
3 the filing date of February 28th and January 20th.

4 MR. GUTHRIE: What about the wreckers,
5 the A. and T. people: Would they have been involved at
6 that time?

7 MR. MacDONALD: They would have been part
8 of the contractors association. At that time, they
9 were classified with general contractors.

10 MR. GUTHRIE: Coming, finally, to this
11 question of the computer and the more frequent payment
12 of assessments, do I understand you to say that this is
13 a matter of cost, or a matter of practicability as to
14 whether or not you increased the frequency of payments?
15 Did you say costs would go up, or that it would put your
16 computer to more work in this field which it should be
17 doing in other fields?

18 MR. MacDONALD: It is a combination of
19 the three things: Costs are going to go up inevitably
20 because we are going to have some loss in investment
21 earnings, and we are also going to have to add some
22 staff in the manual processing that is related to more
23 and more frequent payment of assessment.

24 MR. GUTHRIE: Clerical costs will rise.

25 MR. MacDONALD: Yes, the more important
26 things from our point of view is that we are just on
27 the brink of a rather significant break-through in
28 computer usage, we feel. Therefore, we are reluctant
29 to do anything that ties up the computer for other
30



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1 purposes.

2 MR. GUTHRIE: From the standpoint only
3 of costs, and apart from that last one you mentioned,
4 would you care to say whether those costs would exceed
5 the amount of your present write-offs, or would they
6 be less, or what?

7 MR. MacDONALD: Inevitably, there will
8 be a loss in investment earnings of a greater degree
9 than the amount of the write-off-- I am not sure how
10 they are related.

11 MR. GUTHRIE: You could never recover
12 everything no matter what procedure you adopted?

13 MR. MacDONALD: Definitely not. I think
14 I would like to make this point which I should have
15 done earlier; some part of that write-off is not really
16 a debt in the first instance, in that it was not pro-
17 perly charged. It would represent the type of situa-
18 tion we have just described, where we issued an assess-
19 ment because we did not get a payroll statement. We are
20 giving you our complete write-off, not just the write-
21 off in the true bad debt sense.

22 MR. ESTEY: Not your cash left?

23 MR. MacDONALD: This is the amount that
24 is cancelled.

25 MR. ESTEY: If you put an assessment on
26 something and it turns out ----

27 MR. MacDONALD: To get the exact picture,
28 we have to look at every one of these amounts and
29 decide whether it was cancelled by reason of the fact
30 that an employer could not pay because he had not been



1 in business when we issued it.

2 MR. ESTEY: Could I ask you one question
3 about interest, if we are going to put this in as an
4 Exhibit. This is in our Exhibit 18: Where do I look
5 in Exhibit 18 to find out how much income there was from
6 the fund, the \$200,000,000. fund? Where do I turn to
7 in Exhibit 18?

8 MR. MacDONALD: On page 11, on the Part I
9 right-hand section of the page you will see "Interest
10 from Investments." You will see an item which goes
11 through to \$11,000,000 - \$755,000., and that is the
12 total income. I guess your question is: "From the
13 fund" -- it is from the invested funds we already have
14 and from the funds which are invested during the current
15 year out of current income. It is a combination of the
16 two.

17 MR. ESTEY: That would not include the
18 accrued interest from page 8. You are on a cash basis
19 in that interest account I take it?

20 MR. MacDONALD: That is right. That is
21 an amount that will be received in the year 1966.

22 MR. ESTEY: Perhaps while you are on your
23 feet, you were asked a little about Mr. Pollitt's
24 brief, the Kingston wrecker?

25 MR. MacDONALD: I have not seen that one.

26 MR. ESTEY: Perhaps we can put a copy in
27 front of you. His main complaint is found at the foot
28 of page 1 where he says one rate of assessment for the
29 entire province is unfair. He said there should be
30 three factors taken into account, one is the locality

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1 where the work is done, secondly, the height of the
2 building and, thirdly, the safety record of the firm in
3 question. Then, to support his arguments, he has a
4 schedule attached and this schedule illustrates some-
5 thing you have already told us, namely, a conversion of
6 the wrecking business from part of contracting to its
7 own category, and I take it that occurred in 1962 or
8 1963, because there we see his rate jumps from about
9 4 percent to 10 percent and I suppose that is because
10 he was then set up as part of a new category. Over on
11 the right, his complaint is there is an excess of
12 assessments over accident costs and it shows that for
13 each year and for the seven years it comes to \$16,000.
14 Do you see that?

15 MR. MacDONALD: Yes.

16 MR. ESTEY: I take it your explanation
17 of that is that that is the inevitable result on occasion
18 where you class the good with the bad?

19 MR. MacDONALD: Collective liability
20 produces this result whether you have a large employer
21 or a small employer or medium sized. I think the
22 significant thing here is that the trade associations
23 in this industry wanted to be by themselves, wanted to
24 make sure that everybody who was doing wrecking pay
25 the same rates so that they were on an equal basis
26 when they were quoting, and certainly there would be
27 great objection to having varying rates in different
28 parts of the province.

29 MR. ESTEY: I take it, in fairness to
30 Mr. Pollitt, he is not really proposing that. He is

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1 saying that if a Kingston wrecker were going to bid on
2 a building in Toronto, his rate would take into account
3 the locality where the work was going to be done, but
4 your answer may be too complicated.

5 MR. MacDONALD: I don't think the fact
6 is an addition to the locality and I don't believe
7 personally the size of the building makes as much
8 difference as this gentleman seems to think. I think
9 it is the combination of the way in which the work force
10 is supervised and the hazards that are there that pro-
11 duce the main result plus the matter of chance which
12 none of them can do anything about. I really think
13 that experience rating is the only answer to this type
14 of thing.

15 MR. ESTEY: Experience rating?

16 MR. MacDONALD: Yes, we will be talking
17 about that later.

18 MR. ESTEY: 86(6a) and 93(3).

19 MR. MacDONALD: Well, experience rating
20 per se.

21 MR. ESTEY: Now, since we use 99(3).....

22 THE COMMISSIONER: When you say experience
23 rating, you mean experience rating in the class as a
24 whole apart from the double assessment?

25 MR. MacDONALD: Yes.

26 THE COMMISSIONER: It takes the good half
27 to help out the bad?

28 MR. MacDONALD: That is the basis of the
29 Act?

30 MR. ESTEY: And they are greater
and I take it Pollitt's rate would have come down

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1 automatically. Under section 84 of their Act they
2 have the right to pass legislation which I take it they
3 have done and there is an automatic reduction when a
4 man gets in the position he is in: Do you happen to
5 know that?

6 MR. MacDONALD: I don't think it is quite
7 that automatic.

8 MR. ESTEY: We will do that later.

9 MR. MacDONALD: I would like to talk
10 about experience rating at a later time.

11 MR. ESTEY: Thank you, Mr. MacDonald,
12 that concludes the examination of matters for this
13 week's session, Mr. Commissioner, and it takes us to
14 the session for the week commencing Tuesday morning
15 and the topics are those announced as Number 1 on page
16 2 of the notice sent out two weeks ago, there was a
17 special notice dated October 4th covering these. The
18 Hearing commences Tuesday, October 11th to discuss, one,
19 medical matters generally including the Boards revision-
20 ship with the medical profession, chiropractors, osteo-
21 paths, practitioners under the Chropody Act and
22 Christian Scientists; number two, choice of practitioner.

23 THE COMMISSIONER: And included in there
24 are optometrists and people who do toenails.

25 We will now adjourn until Tuesday morning.

26 ---Adjournment.

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